

EXPORT TRADING COMPANIES LEGISLATION

HEARINGS BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE, INVESTMENT AND MONETARY POLICY OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 7310

A BILL TO ENCOURAGE EXPORTS BY FACILITATING THE FORMATION AND OPERATION OF EXPORT TRADING COMPANIES AND THE EXPANSION OF EXPORT TRADE SERVICES GENERALLY

H.R. 7364

A BILL TO ENCOURAGE EXPORTS BY FACILITATING THE FORMATION AND OPERATION OF EXPORT TRADING COMPANIES AND THE EXPANSION OF EXPORT TRADE SERVICES GENERALLY

H.R. 7436

A BILL TO ENCOURAGE EXPORTS BY FACILITATING THE FORMATION AND OPERATION OF EXPORT TRADING COMPANIES, EXPORT TRADING ASSOCIATIONS, AND THE EXPANSION OF EXPORT TRADE SERVICES GENERALLY

H.R. 7463

A BILL TO INCREASE UNITED STATES EXPORTS OF PRODUCTS AND SERVICES

JULY 1 AND 2, 1980

Serial No. 96-74

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EXPORT TRADING COMPANIES LEGISLATION

TUESDAY, JULY 1, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON INTERNATIONAL TRADE, INVESTMENT AND MONETARY POLICY,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,

Washington, D.C.

The subcommittee met at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Stephen L. Neal (chairman of the subcommittee) presiding.

Present: Representatives Neal, LaFalce, Leach, and Hansen.

Chairman NEAL. The subcommittee will come to order. This is the first day of hearings by this subcommittee on export trading companies. We will be discussing a number of versions of export trading company legislation: H.R. 7310, H.R. 7364, H.R. 7436, and H.R. 7463. Although only those sections of the legislation concerning the Export-Import Bank lie within the jurisdiction of this subcommittee, I have asked witnesses to testify, to discuss all aspects of the proposed legislation that they deem appropriate.

U.S. exports as a percentage of total world exports have been falling. In 1968, the United States accounted for 19 percent of the world's exports. In 1977, the United States accounted for only 13 percent. Our trade balance has also been worsening. In 1979, our trade deficit was \$24.7 billion. Our trade deficit during the first quarter of 1980 was \$10.1 billion. Yesterday the Wall Street Journal announced the largest decline ever in exports over the last 2 years. If this trend continues, we will have a trade deficit of over \$40 billion in 1980.

U.S. exports come primarily from our high technology industries, such as computers, aircraft, and so on, and from agriculture. Recently, and surprisingly, textiles have turned in a strong export performance. The dollar amount of textile exports has risen in the first 4 months of this year by 26 percent, compared to the first 4 months of last year. From January to April 1979, our textile producers exported about \$1 billion of goods. From January to April this year, they have exported about \$1.26 billion. With the help of export trading companies they could do even better and other industries could join them.

Policies to increase our exports could help us recover from the present recession. Steps should be taken by the Government to relax existing restrictions on exports, and new ways must be sought to enable American companies to compete effectively. America lacks well-developed trade intermediaries. Small- and medium-sized companies lack the technical expertise and are

unable to attain the economies of scale necessary in many cases to export their goods.

Export trading companies could provide the necessary technical knowledge, financial leverage, and organizational skills to market exports for them. An important aspect which must be carefully considered is the role of the banking system in promoting exports. An important historical principle of the American banking system is the division between banking and commerce. This division, it seems to me, should be breached only for strong and compelling reasons—the version of the export trading company bill which I introduced does not allow for banks to invest in export trading companies. I am not sure that that is the correct position to take, but my purpose is to focus attention on the issue and ensure that we weigh it carefully in the process of reaching some workable compromise.

The Eximbank can play a crucial role in stimulating export through guarantees of loans to export trading companies. One version of the legislation before us calls on Eximbank to guarantee loans for inventories as well as accounts receivable of export trading companies. Another version limits guarantees to accounts receivable, on the grounds that Eximbank does not finance the inventories of other exporters and financing inventories would entail a potential risk higher than Eximbank should accept.

I hope we can work out these differences, to reach a bill that we can all support during this Congress.

[The texts of H.R. 7310, H.R. 7364, H.R. 7436, and H.R. 7463 follow:]

96TH CONGRESS
2D SESSION

H. R. 7310

To encourage exports by facilitating the formation and operation of export trading companies and the expansion of export trade services generally.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 1980

Mr. LAFALCE introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, the Judiciary, Banking, Finance and Urban Affairs, and Ways and Means

A BILL

To encourage exports by facilitating the formation and operation of export trading companies and the expansion of export trade services generally.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Export
5 Trading Company Act of 1980".

6 FINDINGS

7 SEC. 2. (a) The Congress finds and declares that—

1 (1) tens of thousands of American companies pro-
2 duce exportable goods or services but do not engage in
3 exporting;

4 (2) although the United States is the world's lead-
5 ing agricultural exporting nation, many farm products
6 are not marketed as widely and effectively abroad as
7 they could be through producer-owned export trading
8 companies;

9 (3) exporting requires extensive specialized knowl-
10 edge and skills and entails additional, unfamiliar risks
11 which present costs for which smaller producers cannot
12 realize economies of scale;

13 (4) export trade intermediaries, such as trading
14 companies, can achieve economies of scale and acquire
15 expertise enabling them to export goods and services
16 profitably, at low per unit cost to producers;

17 (5) the United States lacks well-developed export
18 trade intermediaries to package export trade services
19 at reasonable prices (exporting services are fragmented
20 into a multitude of separate functions; companies at-
21 tempting to offer comprehensive export trade services
22 lack financial leverage to reach a significant portion of
23 potential United States exporters);

1 (6) the development of export trading companies
2 in the United States has been hampered by insular
3 business attitudes and by Government regulations; and

4 (7) if United States export trading companies are
5 to be successful in promoting United States exports
6 and in competing with foreign trading companies, they
7 must be able to draw on the resources, expertise, and
8 knowledge of the United States banking system, both
9 in the United States and abroad.

10 (b) The purpose of this Act is to increase United States
11 exports of products and services by encouraging more effi-
12 cient provision of export trade services to American produc-
13 ers and suppliers.

14 **DEFINITIONS**

15 **SEC. 3. (a) As used in this Act—**

16 (1) the term "export trade" means trade or com-
17 merce in goods produced in the United States or serv-
18 ices produced in the United States exported, or in the
19 course of being exported, from the United States to
20 any foreign nation;

21 (2) the term "goods produced in the United
22 States" means tangible property manufactured, pro-
23 duced, grown, or extracted in the United States, not
24 more than 50 per centum of the fair market value of

1 which is attributable to articles imported into the
2 United States;

3 (3) the term "services produced in the United
4 States" includes, but is not limited to amusement, ar-
5 chitectural, automatic data processing, business, com-
6 munications, consulting, engineering, financial, insur-
7 ance, legal, management, repair, training, and trans-
8 portation services, not less than 50 per centum of the
9 fair market value of which is provided by United
10 States citizens or is otherwise attributable to the
11 United States;

12 (4) the term "export trade services" includes, but
13 is not limited to, international market research, adver-
14 tising, marketing, insurance, legal assistance, transpor-
15 tation, including trade documentation and freight for-
16 warding, communication and processing of foreign
17 orders to and for exporters and foreign purchasers,
18 warehousing, foreign exchange, and financing when
19 provided in order to facilitate the export of goods or
20 services produced in the United States;

21 (5) the term "export trading company" means a
22 company which does business under the laws of the
23 United States or any State and which is organized and
24 operated principally for the purposes of—

(A) exporting goods or services produced in the United States; and

(B) facilitating the exportation of goods and

services produced in the United States by unaffiliated persons by providing one or more export

trade services;

(6) the term "United States" means the several

States of the United States, the District of Columbia,

the Commonwealth of Puerto Rico, the Virgin Islands,

American Samoa, Guam, the Commonwealth of the

Northern Mariana Islands, and the Trust Territory of

the Pacific Islands;

(7) the term "Secretary" means the Secretary of

Commerce; and

(8) the term "company" means any corporation,

partnership, association, or similar organization.

(b) The Secretary is authorized, by regulation, to further

define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 4. The Secretary shall promote and encourage the

formation and operation of export trading companies by pro-

viding information and advice to interested persons. The As-

istant Secretary of Commerce for Trade Promotion shall be

responsible for such activities and shall provide a referral

1 service to facilitate contact between producers of exportable

2 goods and services and firms offering export trade services.

3 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,

4 BANK HOLDING COMPANIES, AND INTERNATIONAL

5 BANKING CORPORATIONS

6 SEC. 5. (a) For the purpose of this section—

7 (1) the term “banking organization” means any

8 State bank, national bank, bank holding company,

9 Edge Act Corporation, or Agreement Corporation;

10 (2) the term “State bank” means any bank which

11 is incorporated under the laws of any State; any terri-

12 tory of the United States, the Commonwealth of

13 Puerto Rico, Guam, American Samoa, the Common-

14 wealth of the Northern Mariana Islands, or the Virgin

15 Islands, or which is operating under the Code of Law

16 for the District of Columbia (except a national bank);

17 (3) the term “State member bank” means any

18 State bank which is a member of the Federal Reserve

19 System;

20 (4) the term “State nonmember insured bank”

21 means any State bank which is not a member of the

22 Federal Reserve System, but the deposits of which are

23 insured by the Federal Deposit Insurance Corporation;

1 (5) the term "bank holding company" has the
2 same meaning as in the Bank Holding Company Act of
3 1956;

4 (6) the term "Edge Act Corporation" means a
5 corporation organized under section 25(a) of the Fed-
6 eral Reserve Act;

7 (7) the term "Agreement Corporation" means a
8 corporation operating subject to section 25 of the Fed-
9 eral Reserve Act;

10 (8) the term "appropriate Federal banking
11 agency" means—

12 (A) the Comptroller of the Currency with re-
13 spect to a national bank;

14 (B) the Board of Governors of the Federal
15 Reserve System with respect to a State member
16 bank, bank holding company, Edge Act Corpora-
17 tion, or Agreement Corporation; and

18 (C) the Federal Deposit Insurance Corpora-
19 tion with respect to a State nonmember insured
20 bank;

21 (9) the term "capital and surplus" means paid in
22 and unimpaired capital and surplus, and includes undi-
23 vided profits and such other items as the appropriate
24 Federal banking agency may deem appropriate;

(10) an "affiliate" of a banking organization or
 export trading company is a person who controls, is
 controlled by, or is under common control with such
 banking organization or export trading company;

(11) the term "control" means the power, directly
 or indirectly, to vote more than 50 per centum of the
 voting stock or other evidences of ownership of any
 person, or otherwise having the power to direct or
 cause the direction of the management or policies of
 any person; and

(12) the term "export trading company" has the
 same meaning as in section 3(5) of this Act, or any
 company organized and operating principally for the
 purpose of providing export trade services, as defined
 in section 3(4) of this Act.

(b) Notwithstanding any prohibition, restriction, limita-
 tion, condition, or requirement contained in any other provi-
 sion of law, any banking organization, subject to the proce-
 dures, limitations, and conditions of this section, may acquire
 and hold for its own account, either directly or indirectly, the
 voting stock or other evidences of ownership of any export
 trading company.

(c)(1) Any banking organization may invest not more
 than 5 per centum of its capital and surplus in no more than
 50 per centum of the voting stock or other evidences of own-

1 ownership of any export trading company without obtaining the
 2 prior approval of the appropriate Federal banking agency,
 3 except that an Edge Act Corporation not engaged in bank-
 4 ing, as defined by the Board of Governors of the Federal
 5 Reserve System, may invest up to 25 per centum of its capi-
 6 tal and surplus in no more than 50 per centum of the voting
 7 stock or other evidences of ownership of any such company
 8 without obtaining the prior approval of the Board of Gover-
 9 nors of the Federal Reserve System.

10 (2) Any banking organization may, subject to the limita-
 11 tions contained in subsection (e), make an investment in the
 12 voting stock or other evidences of ownership of an export
 13 trading company which does not comply with paragraph (1),
 14 if it files an application with the appropriate Federal banking
 15 agency to make such investment and within sixty days after
 16 the receipt of such application, the appropriate Federal bank-
 17 ing agency has not issued an order pursuant to subsection (d)
 18 denying such proposed investment. The appropriate Federal
 19 banking agency may require such information in any applica-
 20 tion filed pursuant to this subsection as is reasonably neces-
 21 sary to consider the factors specified in subsection (d). An
 22 application is received for the purpose of this paragraph when
 23 it has been accepted for processing by the appropriate Fed-
 24 eral banking agency. Upon receipt of an application, the ap-
 25 propriate Federal banking agency shall transmit a copy

1 thereof to the Secretary of Commerce and afford the Secre-
2 tary a reasonable time, not to exceed thirty days, to present
3 the views of the Department of Commerce on the application.
4 An investment may be made prior to the expiration of the
5 disapproval period if the appropriate Federal banking agency
6 issues written notice of its intent not to disapprove the
7 investment.

8 (3) Any banking organization whose proposed acqui-
9 sition under paragraph (2) is disapproved by an order of the
10 appropriate Federal banking agency under subsection (d),
11 may obtain a review of such order in the United States court
12 of appeals within any circuit wherein such organization has
13 its principal place of business, or in the Court of Appeals for
14 the District of Columbia Circuit, by filing a notice of appeal
15 in such court within thirty days from the date of such order,
16 and simultaneously sending a copy of such notice by regis-
17 tered or certified mail to the appropriate Federal banking
18 agency. The appropriate Federal banking agency shall
19 promptly certify and file in such court the record upon which
20 the disapproval was based. The court shall set aside any
21 order found to be (A) arbitrary, capricious, an abuse of discre-
22 tion, or otherwise not in accordance with law; (B) contrary to
23 constitutional right, power, privilege, or immunity; (C) in
24 excess of statutory jurisdiction, authority, or limitations, or

1 short of statutory right; or (D) not in accordance with the
2 procedures required by this section.

3 (d) The appropriate Federal banking agency may disap-
4 prove any investment for which an application is filed under
5 subsection (c)(2) if it finds that the export-related benefits of
6 such acquisition are clearly outweighed in the public interest
7 by adverse competitive, financial, managerial, or other bank-
8 ing factors associated with the particular acquisition. In
9 weighing the export-related benefits of a particular proposal,
10 the appropriate Federal banking agency shall give due con-
11 sideration to the views of the Department of Commerce fur-
12 nished pursuant to subsection (c)(2), and shall give special
13 weight to any application that will open new markets for
14 United States goods and services abroad, or that will involve
15 small- or medium-size businesses or agricultural concerns
16 new to the export market. Any disapproval order issued
17 under this section must contain a statement of the reasons for
18 disapproval.

19 (e)(1) No banking organization holding voting stock or
20 other evidences of ownership of any export trading company
21 may extend credit or cause any affiliate to extend credit to
22 any export trading company or to customers of such company
23 on terms more favorable than those afforded similar borrow-
24 ers in similar circumstances.

(2) Except as provided in subsection (c)(1), no banking organization may, in the aggregate, invest in excess of 10 per centum of its capital and surplus in the stock or other evidences of ownership of one or more export trading companies.

(f) The appropriate Federal banking agencies may adopt such rules and regulations and require such reports as are necessary to enable them to carry out the provisions of this section and prevent evasions thereof.

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 6. (a) The Export-Import Bank of the United States is authorized to provide loans or guarantees to export trading companies to help such companies meet operating expenses and make investments in facilities related to the export of goods or services produced in the United States, or related to the provision of export trade services, if in the judgment of the Board of Directors of the Bank—

(1) the loans or guarantees would facilitate exports which would not otherwise occur;

(2) the company is unable to obtain sufficient financing on reasonable terms from other sources; and

(3) there is reasonable assurance of repayment.

(b) Loans and guarantees under this section shall be used only for the financing of exports and export trade services. The amount of loans and guarantees to any single con-

cern in any year may not exceed 50 per centum of such concern's annual operating expenses, as determined by the Board.

(c) The Bank shall not make loans or guarantees available to any one company in excess of \$1,000,000 in any twelve-month period, or \$2,500,000 in total. The aggregate amount of loans or guarantees outstanding at any time under this section may not exceed \$100,000,000. The authority granted by this section shall expire five years after the date of enactment of this Act.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 7. The Export-Import Bank of the United States is authorized and directed to provide guarantees for up to 80 per centum of the principal of loans extended by financial institutions or other private creditors to export trading companies as defined in section 3(5) of this Act, or to exporters, for periods up to one year when in the judgment of the Board of Directors—

- (1) such guarantees would facilitate expansion of exports which would not otherwise occur;
- (2) the guarantees are essential to enable the export trading company or exporter to receive adequate credit to conduct normal business operations; and

(3) the guarantees are adequately secured by
 export accounts receivable or inventories of exportable
 goods.

Guarantees provided under the authority of this section shall
 be subject to limitations contained in annual appropriations
 Acts.

ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED EXPORT TRADING COMPANIES

SEC. 8. Nothing in this Act preempts or otherwise re-
 stricts, prevents, or discourages any State or local govern-
 ment, or other governmental authority from organizing,
 owning, or otherwise participating in or supporting export
 trading companies. In carrying out the authority provided by
 sections 6 and 7, the Export-Import Bank of the United
 States shall not deny eligibility to an export trading company
 on the basis of ownership of such company by a State or local
 government or other governmental authority.

ELIGIBILITY UNDER THE WEBB-POMERENE ACT

SEC. 9. Section 2 of the Webb-Pomerene Act (15
 U.S.C. 62) is amended—

(1) by inserting after "engaged solely in such
 export trade," the following: "or with respect solely to
 its export trade activities, any corporation which is an
 export trading company as defined in section 3(5) of
 the Export Trading Company Act of 1980,"; and

(2) by inserting "or export trading company" after
 "association" each place, after the first, it appears.

APPLICATION OF DISC RULES TO EXPORT TRADING

COMPANIES

SEC. 10. (a) Paragraph (3) of section 992(d) of the Internal Revenue Code of 1954 (relating to ineligible corporations) is amended by inserting before the comma at the end thereof the following: "(other than a financial institution which is a banking organization as defined in section 5(a)(1) of the Export Trading Company Act of 1980 investing in the voting stock of an export trading company (as defined in section 3(5) of the Export Trading Act of 1980) in accordance with the provisions of section 5 of such Act)".

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

(1) by striking out "and" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "and", and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a DISC which is an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980), or

1 which is a subsidiary of such a company, gross re-
 2 cepts from the export of services produced in the
 3 United States (as defined in section 3(3) of such
 4 Act) or from export trade services (as defined in
 5 section 3(4) of such Act)."
 6 (c) The Secretary of Commerce, after consultation with
 7 the Secretary of the Treasury, shall develop, prepare, and
 8 distribute to interested parties, including potential exporters,
 9 information concerning the manner in which an export trad-
 10 ing company can utilize the provisions of part IV of sub-
 11 chapter N of chapter 1 of the Internal Revenue Code of 1954
 12 (relating to domestic international sales corporations), and
 13 any advantages or disadvantages which may reasonably be
 14 expected from the election of DISC status or the establish-
 15 ment of a subsidiary corporation which is a DISC.

16 (d) The amendments made by this section shall apply
 17 with respect to taxable years beginning after December 31,
 18 1980.

19 SUBCHAPTER S STATUS FOR EXPORT TRADING

20 COMPANIES

21 SEC. 11. (a) Paragraph (1) of section 1371(a) of the
 22 Internal Revenue Code of 1954 (relating to the definition of a
 23 small business corporation) is amended by inserting " , except
 24 in the case of the shareholders of an export trading company
 25 (as defined in section 3(5) of the Export Trading Company

1 Act of 1980) if such shareholders are otherwise small busi-
2 ness corporations for the purpose of this subchapter," after
3 "shareholders".

4 (b) The first sentence of section 1372(e)(4) of such Code
5 (relating to foreign income) is amended by inserting ", other
6 than an export trading company," after "small business
7 corporation".

8 (c) The amendments made by this section shall apply
9 with respect to taxable years beginning after December 31,
10 1980.

96TH CONGRESS
2D SESSION

H. R. 7364

To encourage exports by facilitating the formation and operation of export trading companies and the expansion of export trade services generally.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 1980

Mr. AUCOIN introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs, Foreign Affairs, the Judiciary, and Ways and Means

A BILL

To encourage exports by facilitating the formation and operation of export trading companies and the expansion of export trade services generally.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Export
5 Trading Company Promotion Act of 1980".

6 FINDINGS

7 SEC. 2. (a) The Congress finds and declares that—

1 (1) tens of thousands of American companies pro-
2 duce exportable goods or services but do not engage in
3 exporting;

4 (2) although the United States is the world's lead-
5 ing agricultural exporting nation, many farm products
6 are not marketed as widely and effectively abroad as
7 they could be through producer-owned export trading
8 companies;

9 (3) exporting requires extensive specialized knowl-
10 edge and skills and entails additional, unfamiliar risks
11 which present costs for which smaller producers cannot
12 realize economies of scale;

13 (4) export trade intermediaries, such as trading
14 companies, can achieve economies of scale and acquire
15 expertise enabling them to export goods and services
16 profitably, at low per unit cost to producers;

17 (5) the United States lacks well-developed export
18 trade intermediaries to package export trade services
19 at reasonable prices (exporting services are fragmented
20 into a multitude of separate functions; companies at-
21 tempting to offer comprehensive export trade services
22 lack financial leverage to reach a significant portion of
23 potential United States exporters);

1 (6) the development of export trading companies
2 in the United States has been hampered by insular
3 business attitudes and by Government regulations; and
4 (7) if United States export trading companies are
5 to be successful in promoting United States exports
6 and in competing with foreign trading companies, they
7 must be able to draw on the resources, expertise, and
8 knowledge of the United States banking system, both
9 in the United States and abroad.

10 (b) The purpose of this Act is to increase United States
11 exports of products and services by encouraging more effi-
12 cient provision of export trade services to American produc-
13 ers and suppliers.

14 DEFINITIONS

15 SEC. 3. (a) As used in this Act—

16 (1) the term "export trade" means trade or
17 commerce in goods produced in the United States, or
18 services produced in the United States, which are ex-
19 ported, or in the course of being exported, from the
20 United States to any foreign nation;

21 (2) the term "goods produced in the United
22 States" means tangible property manufactured, pro-
23 duced, grown, or extracted in the United States, the
24 cost of the imported raw materials and components of

1. which do not exceed 50 per centum of the sales price
2 of the property;

3. (3) the term "services produced in the United
4 States" includes, but is not limited to, accounting,
5 amusement, architectural, automatic data processing,
6 business, communications, consulting, construction
7 franchising and licensing, engineering, financial, insur-
8 ance, legal, management, repair, tourism, training, and
9 transportation services, not less than 50 per centum of
10 the sales or billings of which is provided by United
11 States citizens or is otherwise attributable to the
12 United States;

13. (4) the term "export trade services" includes, but
14 is not limited to, international market research, adver-
15 tising, marketing, product research and design, insur-
16 ance, legal assistance, transportation, including trade
17 documentation and freight forwarding, communication
18 and processing of foreign orders to and for exporters
19 and foreign purchasers, warehousing, foreign exchange,
20 and financing, when provided in order to facilitate the
21 export of goods or services produced in the United
22 States;

23. (5) the term "export trading company" means a
24 company which does business under the laws of the

1 United States or any State and which is organized and
2 operated principally for the purposes of—

3 (A) exporting goods produced in the United
4 States or services produced in the United States;
5 and

6 (B) facilitating the exportation of goods pro-
7 duced in the United States and services produced
8 in the United States by unaffiliated persons by
9 providing one or more export trade services;

10 (6) the term "United States" means the several
11 States of the United States, the District of Columbia,
12 the Commonwealth of Puerto Rico, the Virgin Islands,
13 American Samoa, Guam, the Commonwealth of the
14 Northern Mariana Islands, and the Trust Territory of
15 the Pacific Islands;

16 (7) the term "Secretary" means the Secretary of
17 Commerce;

18 (8) the term "State" includes the District of Co-
19 lumbia; and

20 (9) the term "company" means any corporation,
21 partnership, association, or similar organization.

22 (b) The Secretary is authorized to further define by reg-
23 ulation, consistent with subsection (a), any term set forth in
24 such subsection.

1 FUNCTIONS OF THE SECRETARY OF COMMERCE

2 SEC. 4. The Secretary shall promote and encourage the
3 formation and operation of export trading companies by pro-
4 viding information and advice to interested persons. The As-
5 sistant Secretary of Commerce for Trade Promotion shall be
6 responsible for such activities and shall provide a referral
7 service to facilitate contact between producers of exportable
8 goods and services and firms offering export trade services.

9 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
10 BANK HOLDING COMPANIES, AND INTERNATIONAL
11 BANKING CORPORATIONS (7)

12 SEC. 5. (a) For purposes of this section—

13 (1) the term "banking organization" means any
14 State bank, national bank, bank holding company,
15 Edge Act Corporation, or Agreement Corporation;

16 (2) the term "State bank" means any bank which
17 is incorporated under the laws of any State, any terri-
18 tory of the United States, the Commonwealth of
19 Puerto Rico, Guam, American Samoa, the Common-
20 wealth of the Northern Mariana Islands, or the Virgin
21 Islands, or which is operating under the Code of Law
22 for the District of Columbia (except a national bank);

23 (3) the term "State member bank" means any
24 State bank which is a member of the Federal Reserve
25 System;

(4) the term "State nonmember insured bank" means any State bank which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(6) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(7) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(8) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member

bank, bank holding company, Edge Act Corporation, or Agreement Corporation; and

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured

bank;

(9) the term "capital and surplus" means paid in and unimpaired capital and surplus, and includes undivided profits and such other items as the appropriate Federal banking agency may deem appropriate;

(10) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(11) the term "control" means the power, directly or indirectly, to vote more than 50 per centum of the voting stock or other evidences of ownership of any person, or otherwise having the power to direct or cause the direction of the management or policies of any person; and

(12) the term "export trading company" has the same meaning as in section 3(5) of this Act, or any company organized and operating principally for the purpose of providing export trade services, as defined in section 3(4) of this Act.

(b) Notwithstanding any prohibition, restriction, limitation, condition, or requirement contained in any other provision of law, any banking organization, subject to the procedures, limitations, and conditions of this section, may acquire and hold for its own account, either directly or indirectly, the

1 voting stock or other evidences of ownership of any export
2 trading company.

3 (c)(1). Any banking organization may invest not more
4 than 5 per centum of its capital and surplus in no more than
5 50 per centum of the voting stock or other evidences of own-
6 ership of any export trading company without obtaining the
7 prior approval of the appropriate Federal banking agency,
8 except that an Edge Act Corporation not engaged in bank-
9 ing, as defined by the Board of Governors of the Federal
10 Reserve System, may invest up to 25 per centum of its capi-
11 tal and surplus in no more than 50 per centum of the voting
12 stock or other evidences of ownership of any such company
13 without obtaining the prior approval of the Board of Gover-
14 nors of the Federal Reserve System.

15 (2) Any banking organization may, subject to the limita-
16 tions contained in subsection (e), make an investment in the
17 voting stock or other evidences of ownership of an export
18 trading company which does not comply with paragraph (1),
19 if it files an application with the appropriate Federal banking
20 agency to make such investment and within sixty days after
21 the receipt of such application, the appropriate Federal bank-
22 ing agency has not issued an order pursuant to subsection (d)
23 denying such proposed investment. The appropriate Federal
24 banking agency may require such information in any applica-
25 tion filed pursuant to this subsection as is reasonably neces-

1 sary to consider the factors specified in subsection (d). An
2 application is received for the purpose of this paragraph when
3 it has been accepted for processing by the appropriate Fed-
4 eral banking agency. Upon receipt of an application, the
5 appropriate Federal banking agency shall transmit a copy
6 thereof to the Secretary of Commerce and afford the Secre-
7 tary a reasonable time, not to exceed thirty days, to present
8 the views of the Department of Commerce on the application.

9 An investment may be made prior to the expiration of the
10 disapproval period if the appropriate Federal banking agency
11 issues written notice of its intent not to disapprove the
12 investment.

13 (3) Any banking organization whose proposed acqui-
14 sition under paragraph (2) is disapproved by an order of the
15 appropriate Federal banking agency under subsection (d),
16 may obtain a review of such order in the United States court
17 of appeals within any circuit wherein such organization has
18 its principal place of business, or in the Court of Appeals for
19 the District of Columbia Circuit, by filing a notice of appeal
20 in such court within thirty days from the date of such order,
21 and simultaneously sending a copy of such notice by regis-
22 tered or certified mail to the appropriate Federal banking
23 agency. The appropriate Federal banking agency shall
24 promptly certify and file in such court the record upon which
25 the disapproval was based. The court shall set aside any

1 order found to be (A) arbitrary, capricious, an abuse of discre-
2 tion, or otherwise not in accordance with law; (B) contrary to
3 constitutional right, power, privilege or immunity; (C) in
4 excess of statutory jurisdiction, authority, or limitations, or
5 short of statutory right; or (D) not in accordance with the
6 procedures required by this section.

7 (d) The appropriate Federal banking agency may disap-
8 prove any investment for which an application is filed under
9 subsection (c)(2) if it finds that the export-related benefits of
10 such acquisition are clearly outweighed in the public interest
11 by adverse competitive, financial, managerial, or other bank-
12 ing factors associated with the particular acquisition. In
13 weighing the export-related benefits of a particular proposal,
14 the appropriate Federal banking agency shall give due con-
15 sideration to the views of the Department of Commerce fur-
16 nished pursuant to subsection (c)(2); and shall give special
17 weight to any application that will open new markets for
18 United States goods and services abroad, or that will involve
19 small- or medium-size businesses or agricultural concerns
20 new to the export market. Any disapproval order issued
21 under this section must contain a statement of the reasons for
22 disapproval.

23 (e)(1) No banking organization holding voting stock or
24 other evidences of ownership of any export trading company
25 may extend credit or cause any affiliate to extend credit to

12.

1 any export trading company or to customers of such company
2 on terms more favorable than those afforded similar borrow-
3 ers in similar circumstances.

4 (2) Except as provided in subsection (c)(1), no banking
5 organization may, in the aggregate, invest in excess of 10 per
6 centum of its capital and surplus in the stock or other
7 evidences of ownership of one or more export trading
8 companies.

9 (f) The appropriate Federal banking agencies may adopt
10 such rules and regulations and require such reports as are
11 necessary to enable them to carry out the provisions of this
12 section and prevent evasions thereof.

13 INITIAL INVESTMENTS AND OPERATING EXPENSES

14 SEC. 6. (a) The Export-Import Bank of the United
15 States is authorized to provide loans or guarantees to export
16 trading companies to help such companies meet operating ex-
17 penses and make investments in facilities related to the
18 export of goods produced in the United States or services
19 produced in the United States, or related to the provision of
20 export trade services, if in the judgment of the Board of
21 Directors of the Bank—

22 (1) such loans or guarantees would facilitate

23 exports which would not otherwise occur;

24 (2) the company is unable to obtain sufficient

25 financing on reasonable terms from other sources; and

(3) there is reasonable assurance of repayment.

(b) Loans and guarantees under this section shall be used only for the financing of exports and export trade services. The amount of loans and guarantees to any single concern in any year may not exceed 50 per centum of such concern's annual operating expenses, as determined by the Board.

(c) The bank shall not make loans or guarantees available to any one company in excess of \$1,000,000 in any twelve-month period, or \$2,500,000 in total. The aggregate amount of loans or guarantees outstanding at any time under this section may not exceed \$100,000,000. The authority granted by this section shall expire five years after the date of enactment of this Act.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 7. The Export-Import Bank of the United States is authorized and directed to provide guarantees for up to 80 per centum of the principal of loans extended by financial institutions or other private creditors to export trading companies as defined in section 3(5) of this Act, or to exporters, for periods up to one year when in the judgment of the Board of Directors—

(1) such guarantees would facilitate expansion of exports which would not otherwise occur;

(2) the guarantees are essential to enable the
 export trading company or exporter to receive ade-
 quate credit to conduct normal business operations; and
 (3) the guarantees are adequately secured by
 export accounts receivable or inventories of exportable
 goods.

Guarantees provided under the authority of this section shall
 be subject to limitations contained in annual appropriations
 Acts.

10 ELIGIBILITY UNDER THE WEBB-POMERENE ACT

11 SEC. 8. Section 2 of the Webb-Pomerene Act (15
 12 U.S.C. 62) is amended—

13 (1) by inserting after "engaged solely in such
 14 export trade," the following: "or with respect solely to
 15 its export trade activities, any corporation which is an
 16 export trading company as defined in section 3(5) of
 17 the Export Trading Company Promotion Act of
 18 1980,"; and

19 (2) by inserting "or export trading company" after
 20 "association" each place, after the first, it appears.

21 APPLICATION OF DISC RULES TO EXPORT TRADING 22 COMPANIES

23 SEC. 9. (a) Paragraph (3) of section 992(d) of the Inter-
 24 nal Revenue Code of 1954 (relating to ineligible corpora-
 25 tions) is amended by inserting before the comma at the end

thereof the following: "(other than a financial institution which is a banking organization as defined in section 5(a)(1) of the Export Trading Company Promotion Act of 1980 investing in the voting stock of an export trading company (as defined in section 3(5) of the Export Trading Company Promotion Act of 1980) in accordance with the provisions of section 5 of such Act)".

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

(1) by striking out "and" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "and", and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a DISC which is an export trading company (as defined in section 3(5) of the Export Trading Company Promotion Act of 1980), or which is a subsidiary of such a company, gross receipts from the export of services produced in the United States (as defined in section 3(3) of such Act) or from export trade services (as defined in section 3(4) of such Act)."

(c) The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall develop, prepare, and distribute to interested parties, including potential exporters, information concerning the manner in which an export trading company can utilize the provisions of part IV of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to domestic international sales corporations), and any advantages or disadvantages which may reasonably be expected from the election of DISC status or the establishment of a subsidiary corporation which is a DISC.

(d) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

SUBCHAPTER S STATUS FOR EXPORT TRADING COMPANIES

SEC. 10. (a) Paragraph (1) of section 1371(a) of the Internal Revenue Code of 1954 (relating to the definition of a small business corporation) is amended by inserting “, except in the case of the shareholders of an export trading company (as defined in section 3(5) of the Export Trading Company Promotion Act of 1980) if such shareholders are otherwise small business corporations for the purpose of this subchapter,” after “shareholders”.

(b) The first sentence of section 1372(e)(4) of such Code (relating to foreign income) is amended by inserting “, other

1 than an export trading company," after "small business
2 corporation".

3 (c) The amendments made by this section shall apply
4 with respect to taxable years beginning after December 31,
5 1980.

6 **REPORT TO CONGRESS**

7 **SEC. 11.** Not more than five years after the date of
8 enactment of this Act, the United States Trade Representa-
9 tive shall report to the Congress on the effects of this Act,
10 and the amendments made by this Act, on the trade of the
11 United States and the trade deficit of the United States. The
12 United States Trade Representative shall prepare such
13 report in consultation with the Attorney General of the
14 United States, the Secretary of the Treasury, the Secretary
15 of Commerce, the Chairman of the Federal Reserve System,
16 and the Comptroller of the Currency.

96TH CONGRESS
2D SESSION

H. R. 7436

To encourage exports by facilitating the formation and operation of export trading companies, export trading associations, and the expansion of export trade services generally.

AND IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1980

Mr. REUSS introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, the Judiciary, and Ways and Means.

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trading associations, and the expansion of export trade services generally.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—EXPORT TRADING COMPANIES

4 SHORT TITLE

5 SEC. 101. This title may be cited as the "Export Trad-
6 ing Company Act of 1980".

1 FINDINGS

2 SEC. 102. (a) The Congress finds and declares that—

3 (1) tens of thousands of American companies pro-
4 duce exportable goods or services but do not engage in
5 exporting;

6 (2) although the United States is the world's lead-
7 ing agricultural exporting nation, many farm products
8 are not marketed as widely and effectively abroad as
9 they could be through producer-owned export trading
10 companies;

11 (3) exporting requires extensive specialized knowl-
12 edge and skills and entails additional, unfamiliar risks
13 which present costs for which smaller producers cannot
14 realize economies of scale;

15 (4) export trade intermediaries, such as trading
16 companies, can achieve economies of scale and acquire
17 expertise enabling them to export goods and services
18 profitably, at low per unit cost to producers;

19 (5) the United States lacks well-developed export
20 trade intermediaries to package export trade services
21 at reasonable prices (exporting services are fragmented
22 into a multitude of separate functions; companies at-
23 tempting to offer comprehensive export trade services
24 lack financial leverage to reach a significant portion of
25 potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods sourced in the United States or services produced in the United States exported, or in the

1 course of being exported, from the United States to
2 any foreign nation;

3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, the
6 cost of the imported raw materials and components
7 thereof shall not exceed 50 per centum of the sales
8 price;

9 (3) the term "services produced in the United
10 States" includes, but is not limited to accounting,
11 amusement, architectural, automatic data processing,
12 business, communications, construction franchising and
13 licensing, consulting, engineering, financial, insurance,
14 legal, management, repair, tourism, training, and
15 transportation services, not less than 50 per centum of
16 the sales or billings of which is provided by United
17 States citizens or is otherwise attributable to the
18 United States;

19 (4) the term "export trade services" includes, but
20 is not limited to, consulting, international market
21 research, advertising, marketing, insurance, product
22 research and design, legal assistance, transportation,
23 including trade documentation and freight forwarding,
24 communication and processing of foreign orders to and
25 for exporters and foreign purchasers, warehousing,

1 foreign exchange, and financing when provided in order
2 to facilitate the export of goods or services produced in
3 the United States;

4 (5) the term "export trading company" means a
5 company which does business under the laws of the
6 United States or any State and which is organized and
7 operated principally for the purposes of—

8 (A) exporting goods or services produced in
9 the United States; and

10 (B) facilitating the exportation of goods and
11 services produced in the United States by unaffil-
12 iated persons by providing one or more export
13 trade services;

14 (6) the term "United States" means the several
15 States of the United States, the District of Columbia,
16 the Commonwealth of Puerto Rico, the Virgin Islands,
17 American Samoa, Guam, the Commonwealth of the
18 Northern Mariana Islands, and the Trust Territory of
19 the Pacific Islands;

20 (7) the term "Secretary" means the Secretary of
21 Commerce; and

22 (8) the term "company" means any corporation,
23 partnership, association, or similar organization.

24 (b) The Secretary is authorized, by regulation, to further
25 define such terms consistent with this section.

1 **FUNCTIONS OF THE SECRETARY OF COMMERCE**

2 **SEC. 104.** The Secretary shall promote and encourage
3 the formation and operation of export trading companies by
4 providing information and advice to interested persons and by
5 facilitating contact between producers of exportable goods
6 and services and firms offering export trade services.

7 **OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,**
8 **BANK HOLDING COMPANIES, AND INTERNATIONAL**
9 **BANKING CORPORATIONS**

10 **SEC. 105. (a)** For the purpose of this section—

11 (1) the term “banking organization” means any
12 State bank, national bank, Federal savings bank, bank-
13 ers’ bank, bank holding company, Edge Act Corpora-
14 tion, or Agreement Corporation;

15 (2) the term “State bank” means any bank which
16 is incorporated under the laws of any State, any terri-
17 tory of the United States, the Commonwealth of
18 Puerto Rico, Guam, American Samoa, the Common-
19 wealth of the Northern Mariana Islands, or the Virgin
20 Islands, or any bank (except a national bank) which is
21 operating under the Code of Law for the District of
22 Columbia (hereinafter referred to as a “District bank”);

23 (3) the term “State member bank” means any
24 State bank, including a bankers’ bank, which is a
25 member of the Federal Reserve System;

1 (4) the term "State nonmember insured bank"
2 means any State bank, including a bankers' bank,
3 which is not a member of the Federal Reserve System,
4 but the deposits of which are insured by the Federal
5 Deposit Insurance Corporation;

6 (5) the term "bankers' bank" means any bank
7 which (A) is organized solely to do business with other
8 financial institutions, (B) is owned primarily by the fi-
9 nancial institutions with which it does business, and (C)
10 does not do business with the general public;

11 (6) the term "bank holding company" has the
12 same meaning as in the Bank Holding Company Act of
13 1956;

14 (7) the term "Edge Act Corporation" means a
15 corporation organized under section 25(a) of the Fed-
16 eral Reserve Act;

17 (8) the term "Agreement Corporation" means a
18 corporation operating subject to section 25 of the Fed-
19 eral Reserve Act;

20 (9) the term "appropriate Federal banking
21 agency" means—

22 (A) the Comptroller of the Currency with re-
23 spect to a national bank or any District bank;

24 (B) the Board of Governors of the Federal
25 Reserve System with respect to a State member

1 bank, bank holding company, Edge Act Corpora-
2 tion, or Agreement Corporation;

3 (C) the Federal Deposit Insurance Corpora-
4 tion with respect to a State nonmember insured
5 bank except a District bank; and

6 (D) the Federal Home Loan Bank Board
7 with respect to a Federal savings bank.

8 In any situation where the banking organization hold-
9 ing or making an investment in an export trading com-
10 pany is a subsidiary of another banking organization
11 which is subject to the jurisdiction of another agency,
12 and some form of agency approval or notification is
13 required, such approval or notification need only be ob-
14 tained from or made to, as the case may be, the appro-
15 priate Federal banking agency for the banking organi-
16 zation making or holding the investment in the export
17 trading company;

18 (10) the term "capital and surplus" means paid in
19 and unimpaired capital and surplus, and includes un-
20 divided profits and such other items as the appropriate
21 Federal banking agency may deem appropriate;

22 (11) an "affiliate" of a banking organization or
23 export trading company is a person who controls, is
24 controlled by, or is under common control with such
25 banking organization or export trading company;

9.

1. (12) the terms "control" and "subsidiary" shall
 2. have the same meanings assigned to those terms in
 3. section 2 of the Bank Holding Company Act of 1956,
 4. and the terms "controlled" and "controlling" shall be
 5. construed consistently with the term "control" as de-
 6. fined in section 2 of the Bank Holding Company Act of
 7. 1956; and
 8. (13) the term "export trading company" has the
 9. same meaning as in section 103(5) of this Act, or
 10. means any company organized and operating princi-
 11. pally for the purpose of providing export trade serv-
 12. ices, as defined in section 103(4) of this Act.
 13. (b)(1) Notwithstanding any prohibition, restriction, limi-
 14. tation, condition, or requirement of any other law, a banking
 15. organization, subject to the limitations of subsection (c) and
 16. the procedures of this subsection, may invest directly and
 17. indirectly in the aggregate, up to 5 per centum of its consoli-
 18. dated capital and surplus (25 per centum in the case of an
 19. Edge Act Corporation or Agreement Corporation not en-
 20. gaged in banking) in the voting stock or other evidences of
 21. ownership of one or more export trading companies. A bank-
 22. ing organization may—
 23. (A) invest up to an aggregate amount of
 24. \$10,000,000 in one or more export trading companies
 25. without the prior approval of the appropriate Federal

1 banking agency, if such investment does not cause an
2 export trading company to become a subsidiary of the
3 investing banking organization; and
4 (B) make investments in excess of an aggregate
5 amount of \$10,000,000 in one or more export trading
6 companies; or make any investment or take any other
7 action which causes an export trading company to
8 become a subsidiary of the investing banking organiza-
9 tion or which will cause more than 50 per centum of
10 the voting stock of an export trading company to be
11 owned or controlled by banking organizations, only
12 with the prior approval of the appropriate Federal
13 banking agency.

14 Any banking organization which makes an investment under
15 authority of clause (A) of the preceding sentence shall
16 promptly notify the appropriate Federal banking agency of
17 such investment and shall file such reports on such invest-
18 ment as such agency may require. If, after receipt of any
19 such notification, the appropriate Federal banking agency de-
20 termines, after notice and opportunity for hearing, that the
21 export trading company is a subsidiary of the investing bank-
22 ing organization, it shall have authority to disapprove the
23 investment or impose conditions on such investment under
24 authority of subsection (d). In furtherance of such authority,
25 the appropriate Federal banking agency may require divesti-

1 ture of any voting stock or other evidences of ownership pre-
2 viously acquired, and may impose conditions necessary for
3 the termination of any controlling relationship.

4 (2) If a banking organization proposes to make any in-
5 vestment or engage in any activity included within the fol-
6 lowing two subparagraphs, it must give the appropriate Fed-
7 eral banking agency sixty days prior written notice before it
8 makes such investment or engages in such activity:

9 (A) any additional investment in an export trading
10 company subsidiary; or

11 (B) the engagement by any export trading
12 company subsidiary in any line of activity, including
13 specifically the taking of title to goods, wares, mer-
14 chandise, or commodities, if such activity was not dis-
15 closed in any prior application for approval.

16 During the notification period provided under this paragraph,
17 the appropriate Federal banking agency may, by written
18 notice, disapprove the proposed investment or activity or
19 impose conditions on such investment or activity under au-
20 thority of subsection (d). An additional investment or activity
21 covered by this paragraph may be made or engaged in, as the
22 case may be, prior to the expiration of the notification period
23 if the appropriate Federal banking agency issues written
24 notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within the ninety-day period which begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the sixty-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of

1. credit by the banking organization and its direct and
 2. indirect subsidiaries to such export trading company
 3. shall not exceed 10 per centum of the banking organi-
 4. zation's capital and surplus.
 5. (3) A banking organization that owns any voting
 6. stock or other evidences of ownership of an export
 7. trading company shall terminate its ownership of such
 8. stock if the export trading company takes positions in
 9. commodities or commodities contracts other than as
 10. may be necessary in the course of its business oper-
 11. ations.

12. (4) No banking organization holding voting stock
 13. or other evidences of ownership of any export trading
 14. company may extend credit or cause any affiliate to
 15. extend credit to any export trading company or to cus-
 16. tomers of such company on terms more favorable than
 17. those afforded similar borrowers in similar circum-
 18. stances, and such extension of credit shall not involve
 19. more than the normal risk of repayment or present
 20. other unfavorable features.

21. (d)(1) In the case of every application under subsection
 22. (b)(1)(B) of this section, the appropriate Federal banking
 23. agency shall take into consideration the financial and man-
 24. agerial resources, competitive situation, and future prospects
 25. of the banking organization and export trading company con-

cerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns, and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies shall establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor, including specifically practices pertaining to an export trading company subsidiary's holding of title to in-

1. ventory. Such standards should be established no later than
2. two hundred and seventy days after enactment of this Act,
3. and opportunity should be provided for public comment and
4. participation in developing such standards. If an export trad-
5. ing company subsidiary of a banking organization proposes to
6. take title to goods, wares, merchandise, or commodities in a
7. manner which does not conform to such standards, or prior to
8. the establishment of such standards, it may only do so with
9. the prior approval of the appropriate Federal banking agency
10. and subject to such conditions and limitations as it may
11. impose under this paragraph.

12. (3) In determining whether to impose any condition
13. under the preceding paragraph (2), or in imposing such condi-
14. tion, the appropriate Federal banking agency must give due
15. consideration to the size of the banking organization and
16. export trading company involved, the degree of investment
17. and other support to be provided by the banking organization
18. to the export trading company, and the identity, character,
19. and financial strength of any other investors in the export
20. trading company. The appropriate Federal banking agency
21. shall not impose any conditions or set standards for the
22. taking of title which unnecessarily disadvantage, restrict or
23. limit export trading companies in competing in world markets
24. or in achieving the purposes of section 102 of this Act. In
25. particular, in setting standards for the taking of title under

1 the preceding paragraph (2), the appropriate Federal banking
2 agencies shall give special weight to the need to take title in
3 certain kinds of trade transactions, such as international
4 barter transactions.

5 (4) Notwithstanding any other provision of this Act, the
6 appropriate Federal banking agency may, whenever it has
7 reasonable cause to believe that the ownership or control of
8 any investment in an export trading company constitutes a
9 serious risk to the financial safety, soundness, or stability of
10 the banking organization and is inconsistent with sound bank-
11 ing principles or with the purposes of this Act or with the
12 Financial Institutions Supervisory Act of 1966, order the
13 banking organization, after due notice and opportunity for
14 hearing, to terminate (within one hundred and twenty days or
15 such longer period as the Board may direct in unusual cir-
16 cumstances) its investment in the export trading company.

17 (5) On or before two years after enactment of this Act,
18 the appropriate Federal banking agencies shall jointly report
19 to the Committee on Banking, Housing, and Urban Affairs of
20 the Senate and the Committee on Banking, Finance and
21 Urban Affairs of the House of Representatives their recom-
22 mendations with respect to the implementation of this sec-
23 tion, their recommendations on any changes in United States
24 law to facilitate the financing of United States exports, espe-
25 cially by smaller and medium-sized business concerns, and

1. their recommendations on the effects of ownership of United
2. States banks by foreign banking organizations affiliated with
3. trading companies doing business in the United States.

4. (e) Any party aggrieved by an order of an appropriate
5. Federal banking agency under this section may obtain a
6. review of such order in the United States court of appeals
7. within any circuit wherein such organization has its principal
8. place of business, or in the court of appeals for the District of
9. Columbia Circuit, by filing a notice of appeal in such court
10. within thirty days from the date of such order, and simulta-
11. neously sending a copy of such notice by registered or certi-
12. fied mail to the appropriate Federal banking agency. The ap-
13. propriate Federal banking agency shall promptly certify and
14. file in such court the record upon which the order was based.
15. The court shall set aside any order found to be (A) arbitrary,
16. capricious, an abuse of discretion, or otherwise not in accord-
17. ance with law; (B) contrary to constitutional right, power,
18. privilege or immunity; or, (C) in excess of statutory jurisdic-
19. tion, authority, or limitations, or short of statutory right; or
20. (D) without observance of procedure required by law. Except
21. for violations of subsection (b)(3) of this section, the court
22. shall remand for further consideration by the appropriate
23. Federal banking agency any order set aside solely for proce-
24. dural errors and may remand for further consideration by the
25. appropriate Federal banking agency any order set aside for

1 substantive errors. Upon remand, the appropriate Federal
2 banking agency shall have no more than sixty days from date
3 of issuance of the court's order to cure any procedural error
4 or reconsider its prior order. If the agency fails to act within
5 this period, the application or other matter subject to review
6 shall be deemed to have been granted as a matter of law.

7 (f)(1) The appropriate Federal banking agencies are au-
8 thorized and empowered to issue such rules, regulations, and
9 orders, to require such reports, to delegate such functions,
10 and to conduct such examinations of subsidiary export trad-
11 ing companies, as each of them may deem necessary in order
12 to perform their respective duties and functions under this
13 section and to administer and carry out the provisions and
14 purposes of this section and prevent evasions thereof.

15 (2) In addition to any powers, remedies, or sanctions
16 otherwise provided by law, compliance with the requirements
17 imposed under this section may be enforced under section 8
18 of the Federal Deposit Insurance Act by any appropriate
19 Federal banking agency defined in that Act.

20 INITIAL INVESTMENTS AND OPERATING EXPENSES

21 SEC. 106. (a) The Economic Development Administra-
22 tion and the Small Business Administration are directed, in
23 their consideration of applications by export trading compa-
24 nies for loans and guarantees, including applications to make
25 new investments related to the export of goods or services

1. produced in the United States and to meet operating ex-
 2. penses, to give special weight to export-related benefits, in-
 3. cluding opening new markets for United States goods and
 4. services abroad and encouraging the involvement of small or
 5. medium-size businesses or agricultural concerns in the export
 6. market.

7. (b) There are authorized to be appropriated as necessary
 8. to meet the purposes of this section, \$20,000,000 for each
 9. fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts
 10. appropriated pursuant to the authority of this subsection shall
 11. be in addition to amounts appropriated under the authority of
 12. other Acts.

13. **GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND**
 14. **INVENTORY**

15. **SEC. 107.** The Export-Import Bank of the United
 16. States is authorized and directed to establish a program to
 17. provide guarantees for loans extended by financial institu-
 18. tions or other private creditors to export trading companies
 19. as defined in section 103(5) of this Act, or to other exporters,
 20. when such loans are secured by export accounts receivable or
 21. inventories of exportable goods, and when in the judgment of
 22. the Board of Directors—

23. (1) the private credit market is not providing ade-
 24. quate financing to enable otherwise creditworthy

1 export trading companies or exporters to consummate
 2 export transactions; and
 3 (2) such guarantees would facilitate expansion of
 4 exports which would not otherwise occur.

5 Guarantees provided under the authority of this section shall
 6 be subject to limitations contained in annual appropriations
 7 Acts.

8 TITLE II—EXPORT TRADE ASSOCIATIONS

9 SHORT TITLE

10 SEC. 201. This title may be cited as the "Export Trade
 11 Association Act of 1980"

12 FINDINGS; DECLARATION OF PURPOSE

13 SEC. 202. (a) FINDINGS.—The Congress finds and de-
 14 clares that—

15 (1) the exports of the American economy are re-
 16 sponsible for creating and maintaining one out of every
 17 nine manufacturing jobs in the United States and for
 18 generating one out of every \$7 of total United States
 19 goods produced;

20 (2) exports will play an even larger role in the
 21 United States economy in the future in the face of
 22 severe competition from foreign government-owned and
 23 subsidized commercial entities;

(3) between 1968 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well-being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(7) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explic-

itly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203: The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

SECTION I. DEFINITIONS.

"As used in this Act—

"(1) **EXPORT TRADE**.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) **SERVICE**.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication services.

"(3) **EXPORT TRADE ACTIVITIES**.—The term 'export trade activities' includes activities or agreements in the course of export trade.

“(4) **TRADE WITHIN THE UNITED STATES.**—The term ‘trade within the United States’ whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

“(5) **ASSOCIATION.**—The term ‘association’ means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations which are created under and exist pursuant to the laws of any State or of the United States.

“(6) **EXPORT TRADING COMPANY.**—The term ‘export trading company’ means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1980.

“(7) **ANTITRUST LAWS.**—The term ‘antitrust laws’ means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12) and section 4 of the Federal Trade Commission Act (15 U.S.C. 44), and any State antitrust or unfair competition law.

1 “(8) **SECRETARY.**—The term ‘Secretary’ means
2 the Secretary of Commerce.

3 “(9) **ATTORNEY GENERAL.**—The term ‘Attorney
4 General’ means the Attorney General of the United
5 States.

6 “(10) **COMMISSION.**—The term ‘Commission’
7 means the Federal Trade Commission.”

8 **ANTITRUST EXEMPTION**
9 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61-66)

10 is amended by striking out section 2 (15 U.S.C. 62) and
11 inserting in lieu thereof the following:

12 “**SEC. 2. EXEMPTION FROM ANTITRUST LAWS.**

13 “(a) **ELIGIBILITY.**—The export trade, export trade ac-
14 tivities, and methods of operation of any association, entered
15 into for the sole purpose of engaging in export trade, and
16 engaged in or proposed to be engaged in such export trade,
17 and the export trade and methods of operation of any export
18 trading company, that—

19 “(1) serve to preserve or promote export trade;

20 “(2) result in neither a substantial lessening of
21 competition or restraint of trade within the United
22 States nor a substantial restraint of the export trade of
23 any competitor of such association;

24 “(3) do not unreasonably enhance, stabilize, or de-
25 press prices within the United States of the goods,

1 wares, merchandise, or services of the class exported
2 by such association;

3 “(4) do not constitute unfair methods of competi-
4 tion against competitors engaged in the export trade of
5 goods, wares, merchandise, or services of the class ex-
6 ported by such association;

7 “(5) do not include any act which results, or may
8 reasonably be expected to result, in the sale for con-
9 sumption or resale within the United States of the
10 goods, wares, merchandise, or services exported by the
11 association or export trading company or its members;
12 and

13 “(6) do not constitute trade or commerce in the
14 licensing of patents, technology, trademarks, or know-
15 how, except as incidental to the sale of the goods,
16 wares, merchandise, or services exported by the associ-
17 ation or export trading company or its members

18 shall, when certified according to the procedures set forth in
19 this Act, be eligible for the exemption provided in subsection
20 (b).

21 “(b) **EXEMPTION.**—An association or an export trading
22 company and its members with respect to its export trade,
23 export trade activities and methods of operation are exempt
24 from the operation of the antitrust laws as relates to their
25 respective export trade, export trade activities or methods of

1 operation that are specified in a certificate issued according
2 to the procedures set forth in the Act, carried out in conform-
3 ity with the provisions, terms, and conditions prescribed in
4 such certificate and engaged in during the period in which
5 such certificate is in effect. The subsequent revocation or in-
6 validation of such certificate shall not render the association
7 or its members or an export trading company or its members,
8 liable under the antitrust laws for such trade, export trade
9 activities, or methods of operation engaged in during such
10 period.

11 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
12 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
13 Act, the Attorney General or Commission has formally ad-
14 vised the Secretary of disagreement with his determination to
15 issue a proposed certificate, and the Secretary has nonethe-
16 less issued such proposed certificate or an amended certifi-
17 cate, the exemption provided by this section shall not be
18 effective until thirty days after the issuance of such
19 certificate.”.

20 AMENDMENT OF SECTION 3

21 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
22 Webb-Pomerene Act (15 U.S.C. 61-66) is amended—

23 (1) by inserting immediately before section 3 (15
24 U.S.C. 63) the following:

1 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
2 ATIONS PERMITTED.",

3 (2) by striking out "SEC. 3. That nothing" in sec-
4 tion 3 and inserting in lieu thereof "Nothing".

5 ADMINISTRATION: ENFORCEMENT: REPORTS

6 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
7 (15 U.S.C. 61–66) is amended by striking out sections 4 and
8 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
9 following sections:

10 "SEC. 4. CERTIFICATION.

11 "(a) PROCEDURE FOR APPLICATION.—Any associ-
12 ation, company, or export trading company seeking certifica-
13 tion under this Act shall file with the Secretary a written
14 application for certification setting forth the following:

15 "(1) The name of the association or export trad-
16 ing company.

17 "(2) The location of all of the offices or places of
18 business of the association or export trading company
19 in the United States and abroad.

20 "(3) The names and addresses of all of the offi-
21 cers, stockholders, and members of the association or
22 export trading company.

23 "(4) A copy of the certificate or articles of incor-
24 poration and bylaws, if the association or export trad-
25 ing company is a corporation; or a copy of the articles,
26 partnership, joint venture, or other agreement or con-

1 tract under which the association conducts or proposes
2 to conduct its export trade activities or contract of as-
3 sociation, if the association is unincorporated.

4 “(5) A description of the goods, wares, merchan-
5 dise, or services which the association or export trad-
6 ing company or their members export or propose to
7 export.

8 “(6) A description of the domestic and interna-
9 tional conditions, circumstances, and factors which
10 show that the association or export trading company
11 and its activities will serve a specified need in promot-
12 ing the export trade of the described goods, wares,
13 merchandise, or services.

14 “(7) The export trade activities in which the asso-
15 ciation or export trading company intends to engage
16 and the methods by which the association or export
17 trading company conducts or proposes to conduct
18 export trade in the described goods, wares, merchan-
19 dise, or services, including, but not limited to, any
20 agreements to sell exclusively to or through the associ-
21 ation, any agreements with foreign persons who may
22 act as joint selling agents, any agreements to acquire a
23 foreign selling agent, any agreements for pooling tangi-
24 ble or intangible property or resources, or any territo-
25 rial, price-maintenance, membership, or other restric-

1 tions to be imposed upon members of the association or
2 export trading company.

3 “(8) The names of all countries where export
4 trade in the described goods, wares, merchandise, or
5 services is conducted or proposed to be conducted by
6 or through the association or export trading company.

7 “(9) Any other information which the Secretary
8 may request concerning the organization, operation,
9 management, or finances of the association or export
10 trading company; the relation of the association or
11 export trading company to other associations, corpora-
12 tions, partnerships, and individuals; and competition or
13 potential competition, and effects of the association or
14 export trading company thereon. The Secretary may
15 request such information as part of an initial applica-
16 tion or as a necessary supplement thereto. The Secre-
17 tary may not request information under this paragraph
18 which is not reasonably available to the person making
19 application or which is not necessary for certification of
20 the prospective association or export trading company.

21 “(b) ISSUANCE OF CERTIFICATE.—

22 “(1) NINETY-DAY PERIOD.—The Secretary shall
23 issue a certificate to an association or export trading
24 company within ninety days after receiving the applica-
25 tion for certification or necessary supplement thereto if

1 the Secretary, after consultation with the Attorney
2 General and Commission, determines that the associ-
3 ation, its export trade, export trade activities and
4 methods of operation, or export trading company, and
5 its export trade, export trade activities and methods of
6 operation meet the requirements of section 2 of this
7 Act and that the association or export trading company
8 and its activities will serve a specified need in promot-
9 ing the export trade of the goods, wares, merchandise,
10 or services described in the application for certification.
11 The certificate shall specify the permissible export
12 trade, export trade activities and methods of operation
13 of the association or export trading company and shall
14 include any terms and conditions the Secretary deems
15 necessary to comply with the requirements of section 2
16 of this Act. The Secretary shall deliver to the Attorney
17 General and the Commission a copy of any certificate
18 that he proposes to issue. The Attorney General or
19 Commission may, within fifteen days thereafter, give
20 written notice to the Secretary of an intent to offer
21 advice on the determination. The Attorney General or
22 Commission may, after giving such written notice and
23 within forty-five days of the time the Secretary has de-
24 livered a copy of a proposed certificate, formally advise
25 the Secretary of disagreement with his determination.

1 The Secretary shall not issue any certificate prior to
2 the expiration of such forty-five day period unless he
3 has (A) received no notice of intent to offer advice by
4 the Attorney General or the Commission within fifteen
5 days after delivering a copy of a proposed certificate,
6 or (B) received any notice and formal advice of dis-
7 agreement or written confirmation that no formal dis-
8 agreement will be transmitted from the Attorney Gen-
9 eral and the Commission. After the forty-five day
10 period or, if no notice of intent to offer advice has been
11 given, after the fifteen-day period, the Secretary shall
12 either issue the proposed certificate, issue an amended
13 certificate, or deny the application. Upon agreement of
14 the applicant, the Secretary may delay taking action
15 for not more than thirty additional days after the forty-
16 five day period. Before offering advice on a proposed
17 certification, the Attorney General and Commission
18 shall consult in an effort to avoid, wherever possible,
19 having both agencies offer advice on any application.

20 “(2) EXPEDITED CERTIFICATION.—In those in-
21 stances where the temporary nature of the export trade
22 activities, deadlines for bidding on contracts or filling
23 orders, or any other circumstances beyond the control
24 of the association or export trading company which
25 have a significant impact on its export trade, make the

1 90-day period for application approval described in
2 paragraph (1) of this subsection, or an amended appli-
3 cation approval as provided in subsection (c) of this
4 section, impractical for the association or export trad-
5 ing company seeking certification, such association or
6 export trading company may request and may receive
7 expedited action on its application for certification.

8 “(3) APPEAL OF DETERMINATION.—If the Secre-
9 tary determines not to issue a certificate to an associ-
10 ation or export trading company which has submitted
11 an application or an amended application for certifica-
12 tion, then he shall—

13 “(A) notify the association or export trading
14 company of his determination and the reasons for
15 his determination, and

16 “(B) upon request made by the association or
17 export trading company afford it an opportunity
18 for a hearing with respect to that determination in
19 accordance with section 557 of title 5, United
20 States Code.

21 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
22 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
23 terial change in the membership, export trade, export trade
24 activities, or methods of operation, of an association or export
25 trading company then it shall report such change to the Sec-

1 retary and may apply to the Secretary for an amendment of
2 its certificate. Any application for an amendment to a certifi-
3 cate shall set forth the requested amendment of the certifi-
4 cate and the reasons for the requested amendment. Any re-
5 quest for the amendment of a certificate shall be treated in
6 the same manner as an original application for a certificate.
7 If the request is filed within thirty days after a material
8 change which requires the amendment, and if the requested
9 amendment is approved, then there shall be no interruption in
10 the period for which the certificate is in effect.

11 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
12 BY SECRETARY.—After notifying the association or export
13 trading company involved and after an opportunity for hear-
14 ing pursuant to section 554 of title 5, United States Code,
15 the Secretary, on his own initiative—

16 “(1) may require that the organization or oper-
17 ation of the association or export trading company be
18 modified to correspond with its certification, or

19 “(2) shall, upon a determination that the export
20 trade, export trade activities or methods of operation of
21 the association or export trading company no longer
22 meet the requirements of section 2 of this Act, revoke
23 the certificate or make such amendments as may be
24 necessary to satisfy the requirements of such section.

1 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
2 ATTORNEY GENERAL OR CHAIRMAN—

3 “(1) The Attorney General or the Commission
4 may bring an action against an association or export
5 trading company or its members to invalidate, in whole
6 or in part, the certification on the ground that the
7 export trade, export trade activities or methods of op-
8 eration of the association or export trading company
9 fail or have failed, to meet the requirements of section
10 2 of this Act. The Attorney General or Commission
11 shall notify any association or export trading company
12 or member thereof, against which it intends to bring an
13 action for revocation, thirty days in advance, as to its
14 intent to file an action under this subsection. The dis-
15 trict court shall consider any issues presented in any
16 such action de novo and if it finds that the require-
17 ments of section 2 are not met, it shall issue an order
18 declaring the certificate invalid and any other order
19 necessary to effectuate the purposes of this Act and
20 the requirements of section 2.

21 “(2) Any action brought under this subsection
22 shall be considered an action described in section 1337
23 of title 28, United States Code. Pending any such
24 action which was brought during the period any ex-
25 emption is held in abeyance pursuant to section 2(c) of

1 this Act, the court may make such temporary restrain-
2 ing order or prohibition as shall be deemed just in the
3 premises.

4 “(3) No person other than the Attorney General
5 or Commission shall have standing to bring an action
6 against an association or export trading company or
7 their respective members for failure of the association
8 or export trading company or their respective export
9 trade, export trade activities or methods of operation to
10 meet the criteria of section 2 of this Act.

11 “SEC. 5. GUIDELINES.

12 “(a) INITIAL PROPOSED GUIDELINES.—Within ninety
13 days after the enactment of the Export Trade Association
14 Act of 1980, the Secretary, after consultation with the Attor-
15 ney General, and the Commission shall publish proposed
16 guidelines for purposes of determining whether export trade,
17 export trade activities and methods of operation of an associ-
18 ation or export trading company will meet the requirements
19 of section 2 of this Act.

20 “(b) PUBLIC COMMENT PERIOD.—Following publica-
21 tion of the proposed guidelines, and any proposed revision of
22 guidelines, interested parties shall have thirty days to com-
23 ment on the proposed guidelines. The Secretary shall review
24 the comments and, after consultation with the Attorney Gen-
25 eral, and Commission, publish final guidelines within thirty

1 days after the last day on which comments may be made
2 under the preceding sentence.

3 “(c) PERIODIC REVISION.—After publication of the
4 final guidelines, the Secretary shall periodically review the
5 guidelines and, after consultation with the Attorney General,
6 and the Commission, propose revisions as needed.

7 “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
8 ACT.—The promulgation of guidelines under this section
9 shall not be considered rulemaking for purposes of subchapter
10 II of chapter 5 of title 5, United States Code, and section
11 553 of such title shall not apply to their promulgation.

12 “SEC. 6. ANNUAL REPORTS.

13 “Every certified association or export trading company
14 shall submit to the Secretary an annual report, in such form
15 and at such time as he may require, which report updates
16 where necessary the information described by section 4(a) of
17 this Act.

18 “SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE
19 DEPARTMENT.

20 ““The Secretary shall establish within the Department of
21 Commerce an office to promote and encourage to the great-
22 est extent feasible the formation of export trade associations
23 and export trading companies through the use of provisions of
24 this Act in a manner consistent with this Act.

1 "SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING
2 ASSOCIATIONS.

3 "The Secretary shall certify any export trade associ-
4 ation registered with the Federal Trade Commission as of
5 April 3, 1980, if such association, within one hundred and
6 eighty days after the date of enactment of such Act, files with
7 the Secretary an application for certification as provided for
8 in section 5 of this Act, unless such application shows on its
9 face that the association is not eligible for certification under
10 this Act.

11 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
12 REPORT INFORMATION.

13 "(a) GENERAL RULE.—Portions of applications made
14 under section 4, including amendments to such applications,
15 and annual reports made under section 6 that contain trade
16 secrets or confidential business or financial information, the
17 disclosure of which would harm the competitive position of
18 the person submitting such information shall be confidential,
19 and, except as authorized by this section, no officer or em-
20 ployee, or former officer or employee, of the United States
21 shall disclose any such confidential information, obtained by
22 him in any manner in connection with his service as such an
23 officer or employee.

24 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
25 MISSION.—Whenever the Secretary believes that an appli-
26 cant may be eligible for a certificate, or has issued a certifi-

1 cate to an association or export trading company, he shall
2 promptly make available all materials filed by the applicant,
3 association or export trading company, including applications
4 and supplements thereto, reports of material changes, appli-
5 cations for amendments and annual reports, and information
6 derived therefrom. The Secretary shall make available appli-
7 cations, amendments thereto or annual reports, or informa-
8 tion derived therefrom, to the Attorney General or Commis-
9 sion, or any employee or officer thereof, for official use in
10 connection with an investigation or judicial or administrative
11 proceeding under this Act or the antitrust laws to which the
12 United States or the Commission is or may be a party. Such
13 information may only be disclosed by the Secretary upon a
14 prior certification that the information will be maintained in
15 confidence and will only be used for such official law enforce-
16 ment purposes.

17 "SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH

18 UNITED STATES OBLIGATIONS.

19 "At such time as the United States undertakes binding
20 international obligations by treaty or statute, to the extent
21 that the operations of any export trade association or export
22 trading company, certified under this Act, are inconsistent
23 with such international obligations, the Secretary may re-
24 quire it to modify its operations so as to be consistent with
25 such international obligations.

1 "SEC. 11. REGULATIONS.

2 "The Secretary, after consultation with the Attorney
3 General and the Commission, shall promulgate such rules
4 and regulations as may be necessary to carry out the pur-
5 poses of this Act.

6 "SEC. 12. TASK FORCE STUDY.

7 "Seven years after the date of enactment of the Export
8 Trade Association Act of 1980, the President shall appoint,
9 by and with the advice and consent of the Senate, a task
10 force to examine the effect of the operation of this Act on
11 domestic competition and on United States international
12 trade and to recommend either continuation, revision, or ter-
13 mination of the Webb-Pomerene Act. The task force shall
14 have one year to conduct its study and to make its recom-
15 mendations to the President."

16 (b) REDESIGNATION OF SECTION 6.—The Act is
17 amended—

18 (1) by striking out "SEC. 6." in section 6 (15
19 U.S.C. 66), and

20 (2) by inserting immediately before such section
21 the following:

1 "SEC. 14. SHORT TITLE."

2 TITLE III—TAXATION OF EXPORT TRADING
3 COMPANIES

4 APPLICATION OF DISC RULES TO EXPORT TRADING
5 COMPANIES

6 SEC. 301. (a) Paragraph (3) of section 992(d) of the In-
7 ternal Revenue Code of 1954 (relating to ineligible corpora-
8 tions) is amended by inserting before the comma at the end
9 thereof the following: "(other than a financial institution
10 which is a banking organization as defined in section
11 105(a)(1) of the Export Trading Company Act of 1980 in-
12 vesting in the voting stock of an export trading company (as
13 defined in section 103(5) of the Export Trading Act of 1980)
14 in accordance with the provisions of section 105 of such
15 Act)".

16 (b) Paragraph (1) of section 993(a) of the Internal Reve-
17 nue Code of 1954 (relating to qualified export receipts of a
18 DISC) is amended—

19 (1) by striking out "and" at the end of subpara-
20 graph (G),

21 (2) by striking out the period at the end of sub-
22 paragraph (H) and inserting in lieu thereof "and", and

23 (3) by adding at the end thereof the following new
24 subparagraph:

25 "(I) in the case of a DISC which is an
26 export trading company (as defined in section

1 103(5) of the Export Trading Company Act of
2 1980), or which is a subsidiary of such a compa-
3 ny, gross receipts from the export of services pro-
4 duced in the United States (as defined in section
5 103(3) of such Act) or from export trade services
6 (as defined in section 103(4) of such Act).”.

7 (c) The Secretary of Commerce, after consultation with
8 the Secretary of the Treasury, shall develop, prepare, and
9 distribute to interested parties, including potential exporters,
10 information concerning the manner in which an export trad-
11 ing company can utilize the provisions of part IV of sub-
12 chapter N of chapter 1 of the Internal Revenue Code of 1954
13 (relating to domestic international sales corporations), and
14 any advantages or disadvantages which may reasonably be
15 expected from the election of DISC status or the establish-
16 ment of a subsidiary corporation which is a DISC.

17 (d) The amendments made by this section shall apply
18 with respect to taxable years beginning after December 31,
19 1980.

20 SUBCHAPTER S STATUS FOR EXPORT TRADING
21 COMPANIES

22 SEC. 302. (a) Paragraph (2) of section 1371(a) of the
23 Internal Revenue Code of 1954 (relating to the definition of a
24 small business corporation) is amended by inserting “, except
25 in the case of the shareholders of an export trading company

1 (as defined in section 103(5) of the Export Trading Company
2 Act of 1980) if such shareholders are otherwise small busi-
3 ness corporations for the purpose of this subchapter," after
4 "shareholder".

5 (b) The first sentence of section 1372(e)(4) of such Code
6 (relating to foreign income) is amended by inserting ", other
7 than an export trading company," after "small business
8 corporation".

9 (c) The amendments made by this section shall apply
10 with respect to taxable years beginning after December 31,
11 1980.

96TH CONGRESS
2D SESSION

H.R. 7463

To increase United States exports of products and services.

IN THE HOUSE OF REPRESENTATIVES

MAY 29, 1980

Mr. NEAL introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, the Judiciary, Banking, Finance and Urban Affairs, and Ways and Means

A BILL

To increase United States exports of products and services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—EXPORT TRADING COMPANIES**

4 **SHORT TITLE**

5 **SEC. 101.** This title may be cited as the "Export Trad-
6 ing Company Act of 1980".

7 **FINDINGS**

8 **SEC. 102. (a)** The Congress finds and declares that—

9 (1) some American companies produce exportable
10 goods or services but do not export;

(1) the term "export trade" means trade or commerce in goods or services produced in the United

1 States and exported, or in the course of being ex-
2 ported, from the United States to any foreign nation;

3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, unless
6 they contain imported raw materials and components
7 whose costs exceed 50 per centum of their sales price;

8 (3) the term "services produced in the United
9 States" includes, but is not limited to, accounting,
10 amusement, architectural, automatic data processing,
11 business, communications, construction franchising and
12 licensing, consulting, engineering, financial, insurance,
13 legal, management, repair, tourism, training, and
14 transportation services, not less than 50 per centum of
15 the sales or billings of which is provided by United
16 States citizens or is otherwise attributable to the
17 United States;

18 (4) the term "export trade services" includes, but
19 is not limited to, consulting, international market re-
20 search, advertising, marketing, insurance, product re-
21 search and design, legal assistance, transportation,
22 trade documentation and freight forwarding, communi-
23 cation and processing of foreign orders to and for ex-
24 porters and foreign purchasers, warehousing, foreign
25 exchange, and financing when provided in order to fa-

1 facilitate the export of goods or services produced in the
2 United States;

3 (5) the term "export trading company" means a
4 company which does business under the laws of the
5 United States or any State and which is organized and
6 operated principally for the purposes of—

7 (A) exporting goods or services produced in
8 the United States; and

9 (B) facilitating the exportation of goods and
10 services produced in the United States by unaffil-
11 iated persons by providing one or more export
12 trade services;

13 (6) the term "United States" means the several
14 States of the United States, the District of Columbia,
15 the Commonwealth of Puerto Rico, the Virgin Islands,
16 American Samoa, Guam, the Commonwealth of the
17 Northern Mariana Islands, and the Trust Territory of
18 the Pacific Islands;

19 (7) the term "Secretary" means the Secretary of
20 Commerce; and

21 (8) the term "company" means any corporation,
22 partnership, association, or similar organization.

23 (b) The Secretary is authorized, by regulation, to further
24 define such terms consistent with this section.

1 FUNCTIONS OF THE SECRETARY OF COMMERCE

2 SEC. 104. The Secretary shall promote and encourage
3 the formation and operation of export trading companies by
4 providing information and advice to interested persons and by
5 facilitating contact between producers of exportable goods
6 and services and firms offering export trade services.

7 INITIAL INVESTMENTS AND OPERATING EXPENSES

8 SEC. 105. The Economic Development Administration
9 and the Small Business Administration are directed, in their
10 consideration of applications by export trading companies for
11 loans and guarantees, including applications to make new in-
12 vestments related to the export of goods or services produced
13 in the United States and to meet operating expenses, to give
14 special weight to export-related benefits, including opening
15 new markets for United States goods and services abroad and
16 encouraging the involvement of small or medium-size busi-
17 nesses or agricultural concerns in the export market.

18 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND

19 INVENTORY

20 SEC. 106. The Export-Import Bank of the United
21 States is authorized and directed to establish a program to
22 provide guarantees for loans extended by financial institu-
23 tions or other private creditors to export trading companies,
24 as defined in section 103(5) of this Act, when such loans are

1 secured by export accounts receivable, and when in the judg-
2 ment of the Board of Directors—

3 (1) the private credit market is not providing ade-
4 quate financing to enable otherwise creditworthy
5 export trading companies to consummate export trans-
6 actions; and

7 (2) such guarantees would facilitate expansion of
8 exports which would not otherwise occur.

9 Guarantees provided under the authority of this section shall
10 be subject to limitations contained in annual appropriations
11 Acts.

12 TITLE II—EXPORT TRADE ASSOCIATIONS

13 SHORT TITLE

14 SEC. 201. This title may be cited as the "Export Trade
15 Association Act of 1980".

16 FINDINGS; DECLARATION OF PURPOSE

17 SEC. 202. (a) FINDINGS.—The Congress finds and de-
18 clares that—

19 (1) the exports of the American economy are re-
20 sponsible for creating and maintaining one out of every
21 nine manufacturing jobs in the United States and for
22 generating one out of every seven dollars of total
23 United States goods produced;

24 (2) exports will play an even larger role in the
25 United States economy in the future in the face of

1 severe competition from foreign government-owned and
2 subsidized commercial entities;

3 (3) between 1968 and 1977 the United States
4 share of total world exports fell from 19 per centum to
5 13 per centum;

6 (4) service-related industries are vital to the well-
7 being of the American economy inasmuch as they
8 create jobs for seven out of every ten Americans, pro-
9 vide 65 per centum of the Nation's gross national
10 product, and represent a small but rapidly rising per-
11 centage of United States international trade;

12 (5) small and medium-sized firms are prime bene-
13 ficiaries of joint exporting, through pooling of technical
14 expertise, help in achieving economies of scale, and as-
15 sistance in competing effectively in foreign markets;
16 and

17 (6) the Department of Commerce has as one of its
18 responsibilities the development and promotion of
19 United States exports.

20 (b) PURPOSE.—It is the purpose of this Act to encour-
21 age American exports by establishing an office within the
22 Department of Commerce to encourage and promote the for-
23 mation of export trade associations through the Webb-
24 Pomerene Act, by making the provisions of that Act explic-
25 itly applicable to the exportation of services, and by transfer-

1 ring the responsibility for administering that Act from the
2 Federal Trade Commission to the Secretary of Commerce.

3

DEFINITIONS

4 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61-66)
5 is amended by striking out the first section (15 U.S.C. 61)
6 and inserting in lieu thereof the following:

7 "SECTION 1. DEFINITIONS.

8 "As used in this Act—

9 "(1) EXPORT TRADE.—The term 'export trade'
10 means trade or commerce in goods, wares, merchan-
11 dise, or services exported, or in the course of being ex-
12 ported from the United States or any territory thereof
13 to any foreign nation.

14 "(2) SERVICE.—The term 'service' means intangi-
15 ble economic output, including, but not limited to—

16 "(A) business, repair, and amusement
17 services;

18 "(B) management, legal, engineering, archi-
19 tectural, and other professional services; and

20 "(C) financial, insurance, transportation, and
21 communication services.

22 "(3) EXPORT TRADE ACTIVITIES.—The term
23 'export trade activities' includes activities or agree-
24 ments in the course of export trade.

1 “(4) TRADE WITHIN THE UNITED STATES.—The
2 term ‘trade within the United States’ whenever used in
3 this Act means trade or commerce among the several
4 States or in any territory of the United States, or in
5 the District of Columbia, or between any such territory
6 and another, or between any such territory or territo-
7 ries and any State or States or the District of Colum-
8 bia, or between the District of Columbia and any State
9 or States.

10 “(5) ASSOCIATION.—The term ‘association’
11 means any combination, by contract or other arrange-
12 ment, of persons who are citizens of the United States,
13 partnerships which are created under and exist pursu-
14 ant to the laws of any State or of the United States, or
15 corporations which are created under and exist pursu-
16 ant to the laws of any State or of the United States.

17 “(6) EXPORT TRADING COMPANY.—The term
18 ‘export trading company’ means an export trading
19 company as defined in section 103(5) of the Export
20 Trading Company Act of 1980.

21 “(7) ANTITRUST LAWS.—The term ‘antitrust
22 laws’ means the antitrust laws defined in the first sec-
23 tion of the Clayton Act (15 U.S.C. 12) and section 4
24 of the Federal Trade Commission Act (15 U.S.C. 44),
25 and any State antitrust or unfair competition law.

1 “(8) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of Commerce.

3 “(9) ATTORNEY GENERAL.—The term ‘Attorney
4 General’ means the Attorney General of the United
5 States.

6 “(10) COMMISSION.—The term ‘Commission’
7 means the Federal Trade Commission.”.

8 ANTITRUST EXEMPTION

9 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61-66)
10 is amended by striking out section 2 (15 U.S.C. 62) and in-
11 serting in lieu thereof the following:

12 “SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

13 “(a) ELIGIBILITY.—The export trade, export trade ac-
14 tivities, and methods of operation of any association, entered
15 into for the sole purpose of engaging in export trade, and
16 engaged in or proposed to be engaged in such export trade,
17 and the export trade and methods of operation of any export
18 trading company, that—

19 “(1) serve to preserve or promote export trade;

20 “(2) result in neither a substantial lessening of
21 competition or restraint of trade within the United
22 States nor a substantial restraint of the export trade of
23 any competitor of such association;

24 “(3) do not unreasonably enhance, stabilize, or de-
25 press prices within the United States of the goods,

1 wares, merchandise, or services of the class exported
2 by such association;

3 “(4) do not constitute unfair methods of competi-
4 tion against competitors engaged in the export trade of
5 goods, wares, merchandise, or services of the class ex-
6 ported by such association;

7 “(5) do not include any act which results, or may
8 reasonably be expected to result, in the sale for con-
9 sumption or resale within the United States of the
10 goods, wares, merchandise, or services exported by the
11 association or export trading company or its members;
12 and

13 “(6) do not constitute trade or commerce in the
14 licensing of patents, technology, trademarks, or know-
15 how, except as incidental to the sale of the goods,
16 wares, merchandise, or services exported by the associ-
17 ation or export trading company or its members

18 shall, when certified according to the procedures set forth in
19 this Act, be eligible for the exemption provided in subsection
20 (b).

21 “(b) EXEMPTION.—An association or an export trading
22 company and its members with respect to its export trade,
23 export trade activities and methods of operation are exempt
24 from the operation of the antitrust laws as relates to their
25 respective export trade, export trade activities or methods of

1 operation that are specified in a certificate issued according
2 to the procedures set forth in the Act, carried out in conform-
3 ity with the provisions, terms, and conditions prescribed in
4 such certificate and engaged in during the period in which
5 such certificate is in effect. The subsequent revocation or in-
6 validation of such certificate shall not render the association
7 or its members or an export trading company or its members,
8 liable under the antitrust laws for such trade, export trade
9 activities, or methods of operation engaged in during such
10 period.

11 “(c) DISAGREEMENT OF ATTORNEY GENERAL OR
12 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
13 Act, the Attorney General or Commission has formally ad-
14 vised the Secretary of disagreement with his determination to
15 issue a proposed certificate, and the Secretary has nonethe-
16 less issued such proposed certificate or an amended certifi-
17 cate, the exemption provided by this section shall not be
18 effective until thirty days after the issuance of such
19 certificate.”.

20 AMENDMENT OF SECTION 3

21 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
22 Webb-Pomerene Act (15 U.S.C. 61-66) is amended—

23 (1) by inserting immediately before section 3 (15
24 U.S.C. 63) the following:

1 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
2 A TIONS PERMITTED."

3 (2) by striking out "SEC. 3. That nothing" in sec-
4 tion 3 and inserting in lieu thereof "Nothing".

5 ADMINISTRATION: ENFORCEMENT: REPORTS

6 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
7 (15 U.S.C. 61–66) is amended by striking out sections 4 and
8 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
9 following sections:

10 "SEC. 4. CERTIFICATION.

11 "(a) PROCEDURE FOR APPLICATION.—Any associ-
12 ation, company, or export trading company seeking certifica-
13 tion under this Act shall file with the Secretary a written
14 application for certification setting forth the following:

15 "(1) The name of the association or export trad-
16 ing company.

17 "(2) The location of all of the offices or places of
18 business of the association or export trading company
19 in the United States and abroad.

20 "(3) The names and addresses of all of the offi-
21 cers, stockholders, and members of the association or
22 export trading company.

23 "(4) A copy of the certificate or articles of incor-
24 poration and bylaws, if the association or export trad-
25 ing company is a corporation; or a copy of the articles,
26 partnership, joint venture, or other agreement or con-

1 tract under which the association conducts or proposes
2 to conduct its export trade activities or contract of as-
3 sociation, if the association is unincorporated.

4 “(5) A description of the goods, wares, merchan-
5 dise, or services which the association or export trad-
6 ing company or their members export or propose to
7 export.

8 “(6) A description of the domestic and interna-
9 tional conditions, circumstances, and factors which
10 show that the association or export trading company
11 and its activities will serve a specified need in promot-
12 ing the export trade of the described goods, wares,
13 merchandise, or services.

14 “(7) The export trade activities in which the asso-
15 ciation or export trading company intends to engage
16 and the methods by which the association or export-
17 trading company conducts or proposes to conduct
18 export trade in the described goods, wares, merchan-
19 dise, or services, including, but not limited to, any
20 agreements to sell exclusively to or through the associ-
21 ation, any agreements with foreign persons who may
22 act as joint selling agents, any agreements to acquire a
23 foreign selling agent, any agreements for pooling tangi-
24 ble or intangible property or resources, or any ter-
25 ritorial, price-maintenance, membership, or other

1 restrictions to be imposed upon members of the associ-
2 ation or export trading company.

3 “(8) The names of all countries where export
4 trade in the described goods, wares, merchandise, or
5 services is conducted or proposed to be conducted by
6 or through the association or export trading company.

7 “(9) Any other information which the Secretary
8 may request concerning the organization, operation,
9 management, or finances of the association or export
10 trading company; the relation of the association or
11 export trading company to other associations, corpora-
12 tions, partnerships, and individuals; and competition or
13 potential competition, and effects of the association or
14 export trading company thereon. The Secretary may
15 request such information as part of an initial applica-
16 tion or as a necessary supplement thereto. The Secre-
17 tary may not request information under this paragraph
18 which is not reasonably available to the person making
19 application or which is not necessary for certification of
20 the prospective association or export trading company.

21 “(b) ISSUANCE OF CERTIFICATE.—

22 “(1) NINETY-DAY PERIOD.—The Secretary shall
23 issue a certificate to an association or export trading
24 company within ninety days after receiving the applica-
25 tion for certification or necessary supplement thereto if

1 the Secretary, after consultation with the Attorney
2 General and Commission, determines that the associ-
3 ation, its export trade, export trade activities and
4 methods of operation; or export trading company, and
5 its export trade, export trade activities and methods of
6 operation meet the requirements of section 2 of this
7 Act and that the association or export trading company
8 and its activities will serve a specified need in promot-
9 ing the export trade of the goods, wares, merchandise,
10 or services described in the application for certification.
11 The certificate shall specify the permissible export
12 trade, export trade activities and methods of operation
13 of the association or export trading company and shall
14 include any terms and conditions the Secretary deems
15 necessary to comply with the requirements of section 2
16 of this Act. The Secretary shall deliver to the Attorney
17 General and the Commission a copy of any certificate
18 that he proposes to issue. The Attorney General or
19 Commission may, within fifteen days thereafter, give
20 written notice to the Secretary of an intent to offer
21 advice on the determination. The Attorney General or
22 Commission may, after giving such written notice and
23 within forty-five days of the time the Secretary has de-
24 livered a copy of a proposed certificate, formally advise
25 the Secretary of disagreement with his determination.

1 The Secretary shall not issue any certificate prior to
2 the expiration of such forty-five day period unless he
3 has (A) received no notice of intent to offer advice by
4 the Attorney General or the Commission within fifteen
5 days after delivering a copy of a proposed certificate,
6 or (B) received any notice and formal advice of dis-
7 agreement or written confirmation that no formal dis-
8 agreement will be transmitted from the Attorney Gen-
9 eral and the Commission. After the forty-five day
10 period or, if no notice of intent to offer advice has been
11 given, after the fifteen-day period, the Secretary shall
12 either issue the proposed certificate, issue an amended
13 certificate, or deny the application. Upon agreement of
14 the applicant, the Secretary may delay taking action
15 for not more than thirty additional days after the forty-
16 five day period. Before offering advice on a proposed
17 certification, the Attorney General and Commission
18 shall consult in an effort to avoid, wherever possible,
19 having both agencies offer advice on any application.

20 “(2) EXPEDITED CERTIFICATION.—In those in-
21 stances where the temporary nature of the export trade
22 activities, deadlines for bidding on contracts or filling
23 orders, or any other circumstances beyond the control
24 of the association or export trading company which
25 have a significant impact on its export trade, make the

1 90-day period for application approval described in
2 paragraph (1) of this subsection, or an amended appli-
3 cation approval as provided in subsection (c) of this
4 section, impractical for the association or export trad-
5 ing company seeking certification, such association or
6 export trading company may request and may receive
7 expedited action on its application for certification.

8 “(3) APPEAL OF DETERMINATION.—If the Secre-
9 tary determines not to issue a certificate to an associ-
10 ation or export trading company which has submitted
11 an application or an amended application for certifica-
12 tion, then he shall—

13 “(A) notify the association or export trading
14 company of his determination and the reasons for
15 his determination, and

16 “(B) upon request made by the association or
17 export trading company afford it an opportunity
18 for a hearing with respect to that determination in
19 accordance with section 557 of title 5, United
20 States Code.

21 “(c) MATERIAL CHANGES IN CIRCUMSTANCES;
22 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
23 terial change in the membership, export trade, export trade
24 activities, or methods of operation, of an association or export
25 trading company then it shall report such change to the Sec-

1 retary and may apply to the Secretary for an amendment of
2 its certificate. Any application for an amendment to a certifi-
3 cate shall set forth the requested amendment of the certifi-
4 cate and the reasons for the requested amendment. Any re-
5 quest for the amendment of a certificate shall be treated in
6 the same manner as an original application for a certificate.
7 If the request is filed within thirty days after a material
8 change which requires the amendment, and if the requested
9 amendment is approved, then there shall be no interruption in
10 the period for which the certificate is in effect.

11 “(d) AMENDMENT OR REVOCATION OF CERTIFICATE
12 BY SECRETARY.—After notifying the association or export
13 trading company involved and after an opportunity for hear-
14 ing pursuant to section 554 of title 5, United States Code,
15 the Secretary, on his own initiative—

16 “(1) may require that the organization or oper-
17 ation of the association or export trading company be
18 modified to correspond with its certification, or

19 “(2) shall, upon a determination that the export
20 trade, export trade activities or methods of operation of
21 the association or export trading company no longer
22 meet the requirements of section 2 of this Act, revoke
23 the certificate or make such amendments as may be
24 necessary to satisfy the requirements of such section.

1 “(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
2 ATTORNEY GENERAL OR CHAIRMAN—

3 “(1) The Attorney General or the Commission
4 may bring an action against an association or export
5 trading company or its members to invalidate, in whole
6 or in part, the certification on the ground that the
7 export trade, export trade activities or methods of op-
8 eration of the association or export trading company
9 fail or have failed, to meet the requirements of section
10 2 of this Act. The Attorney General or Commission
11 shall notify any association or export trading company
12 or member thereof, against which it intends to bring an
13 action for revocation, thirty days in advance, as to its
14 intent to file an action under this subsection. The dis-
15 trict court shall consider any issues presented in any
16 such action de novo and if it finds that the require-
17 ments of section 2 are not met, it shall issue an order
18 declaring the certificate invalid and any other order
19 necessary to effectuate the purposes of this Act and
20 the requirements of section 2.

21 “(2) Any action brought under this subsection
22 shall be considered an action described in section 1337
23 of title 28, United States Code. Pending any such
24 action which was brought during the period any ex-
25 emption is held in abeyance pursuant to section 2(c) of

1 this Act, the court may make such temporary restrain-
2 ing order or prohibition as shall be deemed just in the
3 premises.

4 “(3) No person other than the Attorney General
5 or Commission shall have standing to bring an action
6 against an association or export trading company or
7 their respective members for failure of the association
8 or export trading company or their respective export
9 trade, export trade activities or methods of operation to
10 meet the criteria of section 2 of this Act.

11 “SEC. 5. GUIDELINES.

12 “(a) INITIAL PROPOSED GUIDELINES.—Within ninety
13 days after the enactment of the Export Trade Association
14 Act of 1980, the Secretary, after consultation with the Attor-
15 ney General, and the Commission shall publish proposed
16 guidelines for purposes of determining whether export trade,
17 export trade activities and methods of operation of an associ-
18 ation or export trading company will meet the requirements
19 of section 2 of this Act.

20 “(b) PUBLIC COMMENT PERIOD.—Following publica-
21 tion of the proposed guidelines, and any proposed revision of
22 guidelines, interested parties shall have thirty days to com-
23 ment on the proposed guidelines. The Secretary shall review
24 the comments and, after consultation with the Attorney Gen-
25 eral, and Commission, publish final guidelines within thirty

1 days after the last day on which comments may be made
2 under the preceding sentence.

3 “(c) PERIODIC REVISION.—After publication of the
4 final guidelines, the Secretary shall periodically review the
5 guidelines and, after consultation with the Attorney General,
6 and the Commission, propose revisions as needed.

7 “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
8 ACT.—The promulgation of guidelines under this section
9 shall not be considered rulemaking for purposes of subchapter
10 II of chapter 5 of title 5, United States Code, and section
11 553 of such title shall not apply to their promulgation.

12 “SEC. 6. ANNUAL REPORTS.

13 “Every certified association or export trading company
14 shall submit to the Secretary an annual report, in such form
15 and at such time as he may require, which report updates
16 where necessary the information described by section 4(a) of
17 this Act.

18 “SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE
19 DEPARTMENT.

20 “‘The Secretary shall establish within the Department of
21 Commerce an office to promote and encourage to the great-
22 est extent feasible the formation of export trade associations
23 and export trading companies through the use of provisions of
24 this Act in a manner consistent with this Act.

1 "SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING
2 ASSOCIATIONS.

3 "The Secretary shall certify any export trade associ-
4 ation registered with the Federal Trade Commission as of
5 April 3, 1980, if such association, within one hundred and
6 eighty days after the date of enactment of such Act, files with
7 the Secretary an application for certification as provided for
8 in section 5 of this Act, unless such application shows on its
9 face that the association is not eligible for certification under
10 this Act.

11 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
12 REPORT INFORMATION.

13 "(a) GENERAL RULE.—Portions of applications made
14 under section 4, including amendments to such applications,
15 and annual reports made under section 6 that contain trade
16 secrets or confidential business or financial information, the
17 disclosure of which would harm the competitive position of
18 the person submitting such information shall be confidential,
19 and, except as authorized by this section, no officer or em-
20 ployee, or former officer or employee, of the United States
21 shall disclose any such confidential information, obtained by
22 him in any manner in connection with his service as such an
23 officer or employee.

24 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
25 MISSION.—Whenever the Secretary believes that an appli-
26 cant may be eligible for a certificate, or has issued a certifi-

1 cate to an association or export trading company, he shall
2 promptly make available all materials filed by the applicant,
3 association or export trading company, including applications
4 and supplements thereto, reports of material changes, appli-
5 cations for amendments and annual reports, and information
6 derived therefrom. The Secretary shall make available appli-
7 cations, amendments thereto or annual reports, or informa-
8 tion derived therefrom, to the Attorney General or Commis-
9 sion, or any employee or officer thereof, for official use in
10 connection with an investigation or judicial or administrative
11 proceeding under this Act or the antitrust laws to which the
12 United States or the Commission is or may be a party. Such
13 information may only be disclosed by the Secretary upon a
14 prior certification that the information will be maintained in
15 confidence and will only be used for such official law enforce-
16 ment purposes.

17 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**

18 **UNITED STATES OBLIGATIONS.**

19 "At such time as the United States undertakes binding
20 international obligations by treaty or statute, to the extent
21 that the operations of any export trade association or export
22 trading company, certified under this Act, are inconsistent
23 with such international obligations, the Secretary may re-
24 quire it to modify its operations so as to be consistent with
25 such international obligations.

1 "SEC. 11. REGULATIONS.

2 "The Secretary, after consultation with the Attorney
3 General and the Commission, shall promulgate such rules
4 and regulations as may be necessary to carry out the pur-
5 poses of this Act.

6 "SEC. 12. TASK FORCE STUDY.

7 "Seven years after the date of enactment of the Export
8 Trade Association Act of 1980, the President shall appoint,
9 by and with the advice and consent of the Senate, a task
10 force to examine the effect of the operation of this Act on
11 domestic competition and on United States international
12 trade and to recommend either continuation, revision, or ter-
13 mination of the Webb-Pomerene Act. The task force shall
14 have one year to conduct its study and to make its recom-
15 mendations to the President."

16 (b) REDESIGNATION OF SECTION 6.—The Act is
17 amended—

18 (1) by striking out "SEC. 6." in section 6 (15
19 U.S.C. 66), and

20 (2) by inserting immediately before such section
21 the following:

1 "SEC. 14. SHORT TITLE."

2 TITLE III—TAXATION OF EXPORT TRADING
3 COMPANIES

4 APPLICATION OF DISC RULES TO EXPORT TRADING
5 COMPANIES

6 SEC. 301. (a) Paragraph (1) of section 993(a) of the In-
7 ternal Revenue Code of 1954 (relating to qualified export
8 receipts of a DISC) is amended—

9 (1) by striking out "and" at the end of subpara-
10 graph (G),

11 (2) by striking out the period at the end of sub-
12 paragraph (H) and inserting in lieu thereof "and", and

13 (3) by adding at the end thereof the following new
14 subparagraph:

15 "(I) in the case of a DISC which is an
16 export trading company (as defined in section
17 103(5) of the Export Trading Company Act of
18 1980), or which is a subsidiary of such a com-
19 pany, gross receipts from the export of services
20 produced in the United States (as defined in sec-
21 tion 103(3) of such Act) or from export trade
22 services (as defined in section 103(4) of such
23 Act).".

24 (b) The Secretary of Commerce, after consultation with
25 the Secretary of the Treasury, shall develop, prepare, and
26 distribute to interested parties, including potential exporters,

1 information concerning the manner in which an export trad-
2 ing company can utilize the provisions of part IV of sub-
3 chapter N of chapter 1 of the Internal Revenue Code of 1954
4 (relating to domestic international sales corporations), and
5 any advantages or disadvantages which may reasonably be
6 expected from the election of DISC status or the establish-
7 ment of a subsidiary corporation which is a DISC.

8 (c) The amendments made by this section shall apply
9 with respect to taxable years beginning after December 31,
10 1980.

11 SUBCHAPTER S STATUS FOR EXPORT TRADING
12 COMPANIES

13 SEC. 302. (a) Paragraph (2) of section 1371(a) of the
14 Internal Revenue Code of 1954 (relating to the definition of a
15 small business corporation) is amended by inserting “, except
16 in the case of the shareholders of an export trading company
17 (as defined in section 103(5) of the Export Trading Company
18 Act of 1980) if such shareholders are otherwise small busi-
19 ness corporations for the purpose of this subchapter,” after
20 “shareholder”.

21 (b) The first sentence of section 1372(e)(4) of such Code
22 (relating to foreign income) is amended by inserting “, other
23 than an export trading company,” after “small business
24 corporation”.

1 (c) The amendments made by this section shall apply
2 with respect to taxable years beginning after December 31,
3 1980.

Chairman NEAL. This morning, I am pleased to welcome several witnesses from the private sector. Tomorrow, we will hear witnesses from the administration. This morning's witnesses are W. Paul Cooper, president of Acme-Cleveland Corp.; representing the National Machine Tool Builders' Association; Charles Levy, vice president of the Emergency Committee for American Trade; and Jerry L. Hester, president of International Trade Operations.

I am pleased to welcome these witnesses. I would like to yield at this time to any members who have opening statements.

Mr. LaFalce.

Mr. LaFALCE. Thank you very much. Mr. Chairman, very briefly, though, I want to commend you for holding these hearings. I consider the issue of export promotion and expansion to be of fundamental importance, paramount importance, to the U.S. economy and to the U.S. competitive posture in the world.

You have outlined quite vividly the disaster that has been the recent American experience insofar as our trade deficits are concerned. It seems to me that there are two alternative courses to cope with that. One is the course of protectionism, and I see too many signs evidencing a willingness on the part of the Members of Congress, at least, to go that route. That route would ultimately lead to disaster.

There is no word for it other than disaster. A policy of protectionism inherently leads to that, absolutely—over the long course, at least.

Therefore, we have got to choose the second alternative, it seems to me. We have got to boost our exports and there are a great many things the United States can do to foster exports. One of them is the passage of the export trading company bill in one form or another. Now, there are a great many different bills that have been introduced in the past 3 to 4 months. Mr. Chairman, you have introduced one. The chairman of our full committee has introduced a bill. Other members of this subcommittee, members of the Foreign Affairs Committee. Of course, I have my bill in. And no one, I think, it is fair to say, is wedded to their bill. These are approaches and we have got to come up with the best approach we can.

It seems to me there are some things that are fundamental, though. First of all, there has got to be greater governmental participation, clearly through Eximbank. Also, in my judgment, the Department of Commerce's Economic Development Administration and the Small Business Administration.

Second, we have got to change the DISC provisions to make sure that these export trading companies can participate in the benefit of DISC provisions; also make changes in subchapter S; third, we have got to clarify the provisions of the Webb-Pomerene Act so as to permit, without any ambiguity or any question, the activities of export trading companies.

Fourth, and here is where I come on—I do not want to say "at odds" with the chairman, I know it isn't that—but I come on with the conviction that it is imperative that the financial institutions be permitted to participate in export trading companies if the export trading company bill is going to be more than a sense of Congress resolution—if it is going to be truly meaningful.

Now, I make that statement cognizant that I am calling for a departure, ever-modest, in my judgment, from past practices, and deviation from present law. However, I do think that we can draft legislation that would insure that the bank involvement in export trading companies alone does not lead to conflicts of interest or unsound banking practices or unfair methods of competition. I think we can enact adequate safeguards through the Federal Reserve Board, the Comptroller of the Currency, the FDIC, and so forth, so that we can strictly regulate the financial institutions' participation in such trading companies.

I think that the gravity of the situation calls not merely for limited action on the part of the U.S. Congress, but for bold action to improve that performance—and that bold action, at the very least, would call for financial institutions' participation.

If we are going to err, I would much prefer that we err on the side of boldness, rather than err on the side of timidity.

The situation before us is so serious insofar as our trade deficits are concerned, that it calls for that type of bold action. Thank you, Mr. Chairman.

Chairman NEAL. I thank the gentleman for his very astute comments. I do want to make it clear that I have no—in fact, I will have to say, I do not think that I have adequate knowledge or background in this subject of the separation of banking and commerce to be able to make any kind of judgment on it at this time. I just think that it is something that we ought to look at very carefully as we develop legislation through the subcommittee process.

I understand that the FDIC is adamantly opposed and that the Federal Reserve has some opposition to it. I am not even sure of their entire line of reasoning, and they may be entirely in error. In the earlier versions of the bill, there would have been opportunities, probably because of loose drafting and so on, for banks to end up with Government guarantees of their own loans to their own trading companies, and that sort of thing, which we would certainly want to avoid. We do not want to make this some sort of welfare program for banks or other trading companies.

We want it to meet our important national goals of increasing our exports, and I feel certain that we can, during the subcommittee hearings and markup, come up with something that would meet these needs. I agree with the gentleman that we need to act boldly in this instance. I thank the gentleman for his comments.

I am told that Mr. Leach is here. Did you have an opening comment?

Mr. LEACH. No.

Chairman NEAL. At this time I would like to welcome our witnesses. Unless there is some objection from them, we will just hear from them in the order in which I listed them, Mr. Cooper, Mr. Levy, and then Mr. Hester. Gentlemen, your prepared statements, without objection, will be put into the record, and summarize and proceed as you wish. I think it would be most helpful if we heard from all three of you and then opened up for questions and answers. So I welcome you again, and Mr. Cooper, we would like to hear from you to start with.

STATEMENT OF W. PAUL COOPER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ACME-CLEVELAND CORP., REPRESENTING THE NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION, ACCOMPANIED BY JAMES H. MACK, PUBLIC AFFAIRS DIRECTOR, NMTBA

Mr. COOPER. Good morning. My name is Paul Cooper. I am president and chief executive officer of Acme-Cleveland Corp. Accompanying me today is James H. Mack, public affairs director of the National Machine Tool Builders' Association. I am pleased to testify today on the subject of export promotion and development, an area of vital interest to both my own corporation and the U.S. machine tool industry generally.

In my full statement, I have outlined Acme-Cleveland's activities in the metal working manufacturing industry, as well as the corporation's recent experience in the export market. In summary, Acme-Cleveland views foreign trade as an extremely significant part of what has come to be recognized as a worldwide machine tool market. A high point of our foreign activity occurred in 1975, when over one-fifth, 21½ percent, of Acme-Cleveland's domestic production had its destination in the export market.

From the statistic it is obvious that export sales can be a very significant factor in the marketing strategy of a company like Acme-Cleveland; however, I think it is important to point out that while we have been active in the export market, our efforts could be even more productive were we to benefit from the integrated approach of an export trading company, as contemplated by the various bills upon which I will comment today.

Moreover, an experienced exporting company such as the Acme-Cleveland Corp. has the potential to assist other, smaller, and/or new companies to the export business by functioning as a part of a full-service export trading company.

Shifting from my own corporation's experience to that of the industry generally, it is important to point out that while the domestic U.S. machine tool market has been oscillating with very little real growth since the middle 1960's, the world market has grown substantially. Unfortunately, most of the worldwide expansion has been absorbed by our foreign competitors, eroding our market share. In the middle 1960's, the American machine tool industry supplied approximately one-third of the total global market; however, according to American Machinist, as of the end of 1979, that portion had fallen to only 17.1 percent.

In short, over the past 13 years, our share of the world market has plummeted by almost 50 percent. This dramatic decline is the result of two factors. First, our domestic market has been invaded by foreign competitors on a scale never before dreamed of; second, and this is the aspect that we wish to focus on at this time, our share of the world's machine tool exports fell from 21 percent in 1964 to just 7 percent last year—placing us well behind West Germany and Japan as a machine tool exporting nation.

Finally, and perhaps most alarmingly, this trend has led to a combined U.S. machine tool trade deficit of nearly \$550 million for 1978 and 1979. The National Machine Tool Builders' Association and its member companies have devoted considerable resources to the development and maintenance of international markets every-

where in the world. In addition to the association having two people who spend virtually their full time overseas promoting U.S. machine tooling exports, NMTBA, in conjunction with the U.S. Department of Commerce, develops seminars and workshops to train our members' people on international financing, export licensing, or any other subject that will benefit a machine tool builder.

We also conduct market research, sponsor foreign exhibitions, and organize reverse trade missions. And we bring large groups of foreign visitors to the International Machine Tool Show in Chicago every 2 years.

In an economy which has until only recently been primarily oriented to the domestic market, it is not hard to understand why export trade has been deprived of significant financial resources. Because of such an overwhelming domestic orientation, the investment and entrepreneurship to establish export trading companies on an economical scale has been difficult.

A number of bills have been introduced which would modify it in some cases go significantly beyond the provisions of the current law relating to export trading companies. Specifically, we commend Chairman Reuss for his insight in this area that is so vital to U.S. foreign economic policy. His bill, H.R. 7436, the Export Trading Company Act of 1980, is an important first step in reasserting U.S. leadership in foreign trade.

Similar legislation has been introduced by Congressmen LaFalce, AuCoin, and yourself, Mr. Chairman. We also wish to take this opportunity to commend Congressman Jonathan B. Bingham, chairman of the House Subcommittee on International Economic Policy and Trade, and Congressman Don Bonker, for their leadership role in the Foreign Affairs Committee, in developing and sponsoring export trading company legislation that is very similar to the bill currently before this committee.

As you know, the Senate Banking Committee has recently reported its legislation in this area, S. 2718. That bill addressed many of the issues to be discussed here today. We commend the Senate Banking Committee for its judicious and expeditious consideration of this important legislation. The Senate Banking Committee's action is also significant in that it gives increased impetus to the legislative processes necessarily a part of the development and implementation of the export trading company concept.

Therefore, we would strongly urge this subcommittee, in consultation with other appropriate committees of the House of Representatives, to act swiftly in drafting corresponding House legislation, so as not to lose the current legislative momentum for this important concept. Such increased U.S. competitiveness in foreign markets should not—indeed, must not—be unduly delayed if we are to get back on the road toward regaining our once-strong foreign trade balance.

To overcome the current lethargy in the area of U.S. involvement in export trading companies, H.R. 7436 attempts to stimulate initiative from at least three possible sources: One, accelerated internal growth by existing U.S. export management or export trading companies; two, formation of independent export trading companies fostered by major corporations with international trade

experience; and three, investments by U.S. banking institutions in new or existing export trading companies.

This third source of increased stimulus, specifically banking involvement in export trading companies, is the issue we wish to focus on at this time. We believe that banks can bring not only financial resources but almost all of the supporting facilities and services which U.S. exporters now most lack by contrast with their foreign competitors and make it possible for American companies to combine their resources in a variety of ways and configurations in the interest of more competitive overseas marketing of American products and services.

More importantly, banks can encourage and help exporters develop a longer term view of and presence in the market. Moreover, bank affiliated trading companies would have a special effect on encouraging more medium and small exporters who are now discouraged by the remoteness and strangeness of foreign markets and buyers, exchange risks, and by the complexity and expense of documentation.

In our view, any legislation purporting to encourage U.S. exports through the facility of export trading companies which does not permit bank participation, and in some cases the right of bank control, is only a half step. Adequate financing is one of the most critical elements of export promotion.

To continue to prohibit bank participation in export trading companies is to continue a halfway policy of halfway steps leading to halfway results.

Although the provisions of section 105 of H.R. 7436 generally enjoy broad-based bipartisan support, apparently some reservations have been expressed concerning the bill's change in the traditional policy of excluding banks from most commercial activities. Although NMTBA supports the general principle of separation of banking and commerce, we believe there is good and sufficient, and indeed compelling reason to make an exception on a controlled basis for limited and conditional bank ownership of export trading companies in order to strengthen U.S. capacity to meet nontraditional international trade competition.

Moreover, we further believe that, as drafted, H.R. 7436 contains prohibitions, restrictions, limitations, conditions, and requirements more than ample to meet each of the concerns raised concerning bank ownership of export trading companies. NMTBA strongly believes that this flexible approach adopted by H.R. 7436 is necessary to encourage effective bank participation.

As we have previously stated, without such initiatives by U.S. banks, the effort to stimulate participation in U.S. export trading companies will be seriously weakened.

In a similar vein, H.R. 7436 also provides that the Export-Import Bank of the United States is to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies or to other exporters when such loans are secured by either export accounts receivable or inventories of exportable goods in circumstances where the private market is not providing adequate financing, and such guarantees would facilitate expansion of exports which would otherwise not occur.

We commend Chairman Reuss for his provision which commits the full faith and credit of the U.S. Government to the pursuit of a more aggressive and expanded export trade. Incorporation of these provisions along with the banking provisions in this bill will permit American exporters to compete more fairly with government-leveraged competitors from other countries.

In conclusion, we commend Chairman Reuss as one of the sponsors of the other export trading company bills currently before Congress for their legislative initiative in this area. The expansion of currently permissible activities under Webb-Pomerene to include services in addition to goods is of vital importance if the United States is to remain an aggressive and effective competitor in the ever-expanding global economy.

Additionally, clarification of the antitrust laws and enforcement powers in this area will be a major improvement which will remove the legal uncertainties which heretofore have discouraged potential export trade. By restructuring the contours of export trading company activities, this legislation will provide the vehicle for increased export activity. However, the active and integral involvement of banks and other financial institutions in export trading companies is the absolutely essential element needed to power this vehicle.

We believe that these two elements working together are the necessary and sufficient requirements of an effective export trading company bill.

Additionally, the extension of Eximbank loans to such trading companies as well as the option of electing DISC status by trading companies are important concepts which merit attention in comprehensive export trading company legislation.

Finally, we thank the subcommittee for affording us the opportunity to relate the experiences of Acme-Cleveland and of the U.S. machine tool industry in the export market. We believe that the legislation we have addressed today can potentially do much to encourage and promote overseas trade by both experienced and new exporters.

We thank the subcommittee for its attention and would be happy to respond to questions.

[Mr. Cooper's prepared statement on behalf of the National Machine Tool Builders' Association (NMTBA), follows:]

STATEMENT BY
W. PAUL COOPER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
ACME-CLEVELAND CORPORATION
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE,
INVESTMENT AND MONETARY POLICY
COMMITTEE ON BANKING, FINANCE & URBAN AFFAIRS
U. S. HOUSE OF REPRESENTATIVES
JULY 1, 1980

I. INTRODUCTION

Good morning, my name is W. Paul Cooper. I am President and Chief Executive Officer of Acme-Cleveland Corporation. Accompanying me today is Mr. James H. Mack, Public Affairs Director of the National Machine Tool Builders' Association (NMTBA), the national trade association of which Acme-Cleveland is one of over 370 member companies.

I am pleased to testify today before this Subcommittee in the dual capacity of corporate spokesman and industry representative on the subject of export promotion and development, an area of vital interest to both my own corporation and the U. S. machine tool industry generally.

Before proceeding with my comments, I would first like to briefly outline Acme-Cleveland's activities in the metalworking manufacturing industry, as well as the corporation's recent experience in the export market.

Acme-Cleveland, a New York Stock Exchange listed corporation, has existed in its present form since 1968. However, several of its predecessor companies and present major components have long histories in the industry, dating back over one hundred years in some cases. The corporation is in the business of manufacturing the tools of metal working productivity: Machine tools, cutting and threading tools, foundry tooling and equipment, electrical and electronic controls, and automated production systems. Currently, these products, including replacement parts, are manufactured by six operating divisions, supported by two service companies with a combined domestic employment of approximately 5,700 workers.

In addition to these domestic U. S. operations, Acme-Cleveland also consists of a number of foreign subsidiaries. Finally, relationships with several foreign licensees and one overseas joint-venture round out the corporation's worldwide business activity.

Acme-Cleveland views foreign trade as an extremely significant part of what has come to be recognized as a worldwide machine tool market. Even prior to Acme-Cleveland's worldwide expansion, several of its predecessor companies enjoyed long and active involvement in foreign trade. A high point of this foreign activity occurred in 1975 when over one fifth (21.5%) of Acme-Cleveland's domestic production had its destination

in the export market. Unfortunately, however, even with an overall increase in total business volume, there has been a steady decline in export sales until in 1979 only 6.0% of domestic production was shipped overseas, for an annual average of 10.3% for the years 1975 through 1979.

Shifting from my own corporation's experience to that of the industry generally, it is important to point out that while the domestic U. S. machine tool market has been oscillating with very little real growth since the middle 1960's, the world market has grown substantially. Unfortunately, most of this worldwide expansion has been absorbed by our foreign competitors, eroding our market share.

In the middle 1960's, the American machine tool industry supplied approximately one-third of the total global market. In other words, one out of every three machine tools consumed in the world was produced by an American machine tool builder. However, according to American Machinist, as of the end of 1979, that portion had fallen to only 17.1%. In short, over the past 13 years, our share of the world market has plummeted by almost 50%.

This dramatic decline is the result of two factors. First, our domestic market has been invaded by foreign competitors on a scale never before dreamed of. For example, since 1964, America's imports of foreign machine tools have more than tripled, growing from 7% of total consumption 15 years ago to 24% in 1979.

It is obvious that, because the United States is the largest open machine tool market in the world, our foreign competitors have pulled out the stops and are aiming their export marketing efforts at America.

Second, and this is the aspect that we wish to focus on at this time, our share of the export market has also declined. When we look at the dollar value of our exports, the results of our efforts look encouraging. But if we look at American exports as a percentage of all of the machine tool exports in the world, the results are, indeed, discouraging. We have been losing export market share at an alarming rate. Our share of the world's machine tool exports fell from 21% in 1964 to just 7% last year, placing us well behind West Germany and Japan as a machine tool exporting nation.

Finally, and perhaps most alarmingly, in 1978 the United States suffered its first machine tool trade deficit in history, with imports exceeding exports by some \$155 million. And, to make matters even worse, this deficit trend continued through 1979. Even though our exports grew by 15.8% over 1978 levels, imports soared by more than 45% to produce an even larger trade deficit of almost \$400 million.

The National Machine Tool Builders' Association is a national trade association representing over 370 American machine tool manufacturing companies, which account for approximately 90% of the United State's machine tool production.

Although the total machine tool industry employs approximately 110,000 people with a combined annual output of around \$4.0 billion, most NMTBA member companies are small businesses with payrolls of 250 or fewer employees.

While relatively small by some corporate standards, American machine tool builders comprise a very basic segment of the U.S. industrial capacity, with a tremendous impact on America. It is the industry that builds the machines that are the foundation of America's industrial strength. Without machine tools, there could be no manufacturing; there would be no trains, no planes, no ships, no cars; there would be no power plants, no electric lights, no refrigerators and no agricultural machinery.

II. NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION EXPORT PROMOTION ACTIVITIES

NMTBA and its member companies have devoted considerable time and effort to increasing exports.

NMTBA, on behalf of the American machine tool industry is devoting its own resources to the development and maintenance of international markets everywhere in the world. The Association

has two people who spend virtually their full time overseas promoting United States machine tool exports with considerable assistance from the Department of Commerce.

NMTEA develops seminars and workshops to train our members' people on international financing, export licensing, or any other subject that will benefit a machine tool builder. We conduct market research to locate new and promising markets for industry development. We have conducted twenty-four Industry Organized, Government Approved (IOGA) trade missions to help gain a foothold in these new markets, and more are planned for 1980 and 1981. We sponsor foreign exhibitions so that our members will have more opportunities to display their products overseas. In addition, we often work in close conjunction with the Commerce Department on such activities as recruiting exhibitors for export promotion events such as catalog shows, video tape shows and technical seminars. We organize reverse trade missions to bring foreign buyers to our plants. And we bring large groups of foreign visitors to the International Machine Tool Show in Chicago every two years. The Commerce Department has worked closely with us in the development and implementation of these programs, as have the commercial officers in our embassies and trade centers around the world.

III. BANK INVOLVEMENT IN EXPORT TRADING COMPANIES

In an economy which has until only recently been primarily oriented to the domestic market, it is not hard to understand why export trade has been deprived of significant financial resources. Because of such an overwhelming domestic orientation, the investment and entrepreneurship to establish export trading companies on an economical scale has been difficult.

A number of bills have been introduced which would modify and in some cases go significantly beyond the provisions of the current law relating to export trading companies. Specifically, we commend Chairman Reuss for his insight in this area that is so vital to U. S. foreign economic policy. His bill, H.R. 7436, the "Export Trading Company Act of 1980," is an important first step in reasserting United States leadership in foreign trade. Similar legislation has been introduced by Congressmen LaFalce, AuCoin, and Neal.

We also wish to take this opportunity to commend Congressman Jonathan Bingham, Chairman of the House Subcommittee on International Economic Policy and Trade, and Congressman Don Bonkers for their leadership role in the Foreign Affairs Committee in developing and sponsoring export trading company legislation that is very similar to the bill currently before this Committee.

As you know, the Senate Banking Committee has recently reported its legislation in this area, S. 2718. That bill addresses many of the issues to be discussed here today. We commend the Senate Banking Committee for its judicious and expeditious consideration of this important legislation. The Senate Banking Committee's action is also significant in that it gives increased impetus to the legislative processes necessarily a part of the development and implementation of the export trading company concept. Therefore, we would strongly urge this Subcommittee, in consultation with other appropriate committees of the House of Representatives, to act swiftly in drafting corresponding House legislation, so as not to lose the current legislative momentum for this important concept. Such increased U. S. competitiveness in foreign markets should not, indeed must not, be unduly delayed if we are to get back on the road towards regaining our once strong foreign trade balance.

To overcome the current lethargy in the area of U. S. involvement in export trading companies, H.R. 7436 attempts to stimulate initiative from at least three possible sources: (1) accelerated internal growth by existing U. S. export management or export trading companies; (2) formation of independent export trading companies fostered by major corporations with international trade experience; and (3) investments by U. S. banking institutions in new or existing export trading companies. This third source of increased stimulus, specifically,

banking involvement in export trading companies is the issue we wish to focus on at this time.

We believe that banks can bring not only financial resources, but almost all of the supporting facilities and services which U. S. exporters now most lack by contrast with their foreign competitors, and make it possible for American companies to combine their resources in a variety of ways and configurations in the interest of more competitive overseas marketing of American products and services. More importantly, banks can encourage and help exporters develop a longer term view of, and presence in the market. Moreover, bank affiliated trading companies would have special effect on encouraging more medium and small exporters who are now discouraged by the remoteness and strangeness of foreign markets and buyers, exchange risks, and by the complexity and expense of documentation.

In our view, any legislation purporting to encourage U. S. exports through the facility of export trading companies, which does not permit bank participation and (in some cases) the right of bank control is only a half step. Adequate financing is one of the most critical elements of export promotion. To continue to prohibit bank participation in export trading companies is to continue a halfway policy of halfway steps leading to halfway results.

Section 105 of the bill would permit U. S. banks to make limited investments in export trading companies (except for noncontrolling investments of less than \$10 million), subject to the prior approval of Federal bank regulatory agencies, and subject to conditions and safeguards designed to ensure the safety and soundness of the banks and prevent favoritism in bank lending to a trading company in which it has an interest in the company's customers.

Although the provisions of section 105 of H.R. 7436 (and similar provisions in S. 2718) generally enjoy broad based bipartisan support, apparently some reservations have been expressed concerning the bill's change in the traditional policy of excluding banks from most commercial activities.

Although NMTBA supports the general principle of separation of banking and commerce, we believe there is good, and sufficient, and indeed compelling reason to make an exception on a controlled basis for limited and conditional bank ownership of export trading companies in order to strengthen U. S. capacity to meet nontraditional international trade competition. Moreover, we further believe that as drafted, H.R. 7436 contains prohibitions, restrictions, limitations, conditions and requirements more than ample to meet each of the concerns raised concerning bank ownership of export trading companies.

Finally, NMTBA believes that arbitrary statutory limits on bank investments serve only to lock banking organizations out of active managerial participation in export trading companies, and deny to export trading companies the substantial international expertise of many banks. Moreover, the regulatory controls included in the bill ensure that the greater degree of bank involvement, the greater degree of bank regulatory agency control.

NMTBA strongly believes that this flexible approach adopted by H.R. 7436 is necessary to encourage effective bank participation. As we have previously stated, without such initiatives by U. S. banks, the effort to stimulate participation in U. S. export trading companies will be seriously weakened.

IV. GOVERNMENT PARTICIPATION

In a similar vein, H.R. 7436 also provides that the Export-Import Bank of the United States is to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies, or to other exporters when such loans are secured by either export accounts receivable or inventories of exportable goods, in circumstance where the private credit market is not providing adequate financing and such guarantees would facilitate expansion of exports which would otherwise not occur.

We commend Chairman Reuss for this provision which commits the full faith and credit of the United States Government to the pursuit of a more aggressive and expanded export trade. Incorporation of these provisions along with the banking provisions in this bill will permit American exporters to compete more fairly with government-leveraged competitors from other countries.

V. ANTITRUST LAW MODIFICATION PROPOSALS

The Webb-Pomerene Act, enacted in 1918, allows American companies to join together in developing foreign sales while enjoying, to some extent, immunity from the antitrust laws. The current statute is administered by the Federal Trade Commission (FTC).

Unfortunately, the role of Webb associations has declined drastically over the years. From a high-water mark of about 19% of total U. S. exports between 1930 and 1935, Webb associations have slipped to less than a 2% share today.

Within the past year the merits of the Webb-Pomerene Act have been re-examined by the National Commission for the Review of Antitrust Laws and Procedures. After reception of conflicting testimony it was the Commission's recommendation that Congress re-examine the Act, and modify it where necessary.

In that regard, we strongly support the expanded export trading company concept embodied in H.R. 7436. We believe that H.R. 7436's expansion of the scope of export

trading companies' current activities under Webb-Pomerene to include both goods and services is a major and significant improvement. We commend Chairman Reuss and the sponsors of the several other bills which adopt this approach.

H.R. 7436 in part accomplishes such expanded export activities by exempting from the antitrust laws any association which is formed for the sole purpose of engaging in export trade, which is engaged in export trade, and which is certified in accordance with the procedures set forth in this Act. However, the bill also prudently limits such exemptions in cases where such associations would result in a substantial restraint of trade or competition within the United States, or where an association or its members, with respect to their export trade enter into an agreement to fix prices or divide sales territories, export goods which may reasonably be expected to be consumed or resold within the United States, or acquire control of a patent or license which will directly result in the obtaining of a substantial share of the export market.

Closely allied with the issue of certain antitrust law exemptions for export trading companies formed under the auspices of H.R. 7436 is the question of who would be able to bring an antitrust complaint against such an export trading company. Under the terms of H.R. 7436 no person other than the Attorney General or the Federal Trade Commission shall have standing to bring an antitrust action against an export trading association or export trading company or their respective members.

Additionally, section 205 of H.R. 7436 authorizes the Secretary of Commerce, with the concurrence of the Attorney General and the Chairman of the Federal Trade Commission, and after a period of public comment, to formulate and publish proposed guidelines to be applied in determining whether an association, its members, and its export trade meet the statutory requirements that would be established by this bill.

All three of these provisions: the exemption of export trading companies from the antitrust laws, the designation of the responsibility for interpreting those exemptions, and the right to bring an action to enforce these laws, are major steps toward resolving the uncertainty created by varying interpretations of the antitrust laws under the current Webb-Pomerene Act.

Finally, we commend and strongly support the requirement of confidentiality as to the applications and annual reports required under H.R. 7436.

Until American exporters are able to combine all aspects of American technology and business know-how into a single overseas consortium, American competitiveness in overseas markets will continue to be seriously impaired.

VI. TAX TREATMENT OF EXPORT TRADING COMPANIES

The tax provisions of H.R. 7436 have several purposes:

(1) to insure that bank investments in export trading companies (ETC) do not disqualify such companies from using Domestic International

Sales Corporations (DISCs); (2) to make receipts from exports of services or export trade services eligible DISC receipts (that is, eligible for partial deferral of income taxation as is now extended to receipts from products sold internationally); (3) to require the Secretary of Commerce in consultation with the Secretary of Treasury to disseminate information on the utilization of DISC status and the likely advantages or disadvantages of doing so; and (4) to modify certain Subchapter S regulations so as to permit small, closely held companies to pass through net losses in the first few years when start-up costs are likely to exceed income.

Addressing each of these provisions individually, we begin by focusing on § 301 of H.R. 7436 which makes clear that export trading companies with banks or other financial institutions as active ETC participants would not be disqualified from using DISCs because of such banking involvement. To do otherwise would be to completely work at cross purposes with the vital role that banks and other financial institutions have to play as the financial fuel necessary to propel the export trading company. Therefore, we urge your support of this provision which would be of substantial assistance to the furtherance of U.S. exports and of net benefit to the United States' economy generally.

Secondly, H.R. 7436 would permit export trading companies to enjoy DISC treatment on all their income, including

income derived from exports of services or export trade services. DISC treatment does not now apply to income derived from such services.

This is a very helpful change in the tax laws. We would suggest that consideration should also be given to both raising significantly the threshold for application of the incremental aspect of DISC and to reducing the average percentage of export sales used to compute the basis over which DISC treatment is applied. These additional improvements will enable small and medium sized exporters to improve their competitiveness in overseas markets. They also take appropriate cognizance of the role of inflation during the past few years in driving up the dollar value of many U. S. export sales.

We are aware that some have criticized the extension of DISC treatment to service related ETC income as being too costly from a revenue standpoint. Apparently the Treasury Department (based on 1978) data has computed the potential revenue cost of extending DISC benefits to "services produced in the United States" to be approximately \$200 - \$500 million. Similarly, Treasury has stated that DISC benefits extended to "export trade services" would potentially lead to a \$100 - \$200 million revenue loss.^{1/}

Apparently, however, the Treasury Department's computations of revenue cost were based on the erroneous premise that DISC benefits would be extended to the two types

¹U.S., Congress, Senate, Export Trading Companies, Trade Associations, and Trade Services, S. Rept. 96-735 to Accompany S. 2718, 96th Cong., 2d Sess., 1980, p. 18.

of service income of all DISCs. To the contrary, H.R. 7436 would extend DISC treatment of service income only to DISCs which would qualify as export trading companies. Thus, as the Senate Banking Committee stated in its report on S. 2718 (which formerly contained tax provisions very similar to those of H.R. 7436), "to the extent Treasury's estimates are based on income from DISCs which would not qualify as export trading companies, the estimates necessarily overstate the actual revenue costs." Moreover, "since most DISCs are exporting, either solely or principally, the goods or services of a parent or affiliate, the number of present DISCs which would qualify as export trading companies is likely to be relatively small."^{2/}

Furthermore, we strongly agree with the conclusion that "[i]f there is any significant revenue loss directly attributable to the tax provisions, it will be because export trading companies succeed in significantly expanding U. S. exports, which means additional revenue is being produced through additional exports."^{3/}

Thirdly, we commend Chairman Reuss for his recognition of the important role that information plays in the stimulation and development of international trade. We, therefore, firmly support the provisions of H.R. 7436 requiring the Secretary of Commerce, in cooperation with the Secretary of the Treasury, to disseminate to exporters and export trading companies information on how to form and use DISCs.

²Ibid.

³Ibid.

Additionally, § 302 of H.R. 7436 would amend Subchapter S of the Internal Revenue Code to permit an export trading company to qualify for the special provisions of that Subchapter without limiting the foreign source income of such a trading company to less than twenty percent per annum. The logic of such a modification for companies whose raison d'être is to engage in foreign trade seems obvious.

Finally § 302 would expand the current Subchapter S eligibility requirement to permit shareholders in companies eligible to use Subchapter S to be not more than fifteen companies, if the companies are each owned by not more than fifteen individuals.

We would recommend such changes as being appropriate and would urge their incorporation in this draft legislation. Although the administration, in contemplation of a more general modification of Subchapter S requirements, has recommended that this legislation not change these regulations, we believe that a change specifically directed to the needs of the export trading companies authorized by this legislation would not be inappropriate at this time.

VII. CONCLUSION

In conclusion, we commend Chairman Reuss as well as the sponsors of the other export trading company bills currently before Congress for their legislative initiative in this area.

The expansion of currently permissible activities under Webb-Pomerene to include services in addition to goods is of vital importance if the U. S. is to remain an aggressive and effective competitor in the ever expanding global economy. Additionally, clarification of the antitrust laws in this area, specifically those concerning which government agencies will be empowered to enforce such laws, will remove the legal uncertainties which heretofore have posed significant, and for many insurmountable, barriers to active involvement in the export market.

As we have stated, by restructurizing the contours of export trading company activities, this legislation will provide the vehicle for increased export activity. However, the active and integral involvement of banks and other financial institutions in export trading companies is the absolutely essential element needed to power this vehicle. We believe that these two elements working together are the necessary and sufficient requirements of an effective export trading company bill.

Additionally, the extension of Eximbank loans to such trading companies as well as the option of electing DISC status by trading companies, although not as absolutely critical as the banking provisions previously mentioned, nevertheless, are important concepts which merit attention in comprehensive export trading company legislation.

Finally, we thank this Subcommittee for affording us the opportunity to relate the experiences of Acme-Cleveland and the U. S. machine tool industry in the export market. We believe that the proposals contained in the bills we have addressed today, in conjunction with the improved export administration controls and executive branch international trade reorganization plan will do much to encourage and promote overseas trade by both experienced and new exporters. We thank the Subcommittee for its attention and would be happy to respond to questions.

Chairman NEAL. Thank you, Mr. Cooper.
Mr. Levy, we would like to hear from you.

**STATEMENT OF CHARLES S. LEVY, VICE PRESIDENT,
EMERGENCY COMMITTEE FOR AMERICAN TRADE**

Mr. LEVY. Thank you, Mr. Chairman. I am Charles S. Levy, vice president of the Emergency Committee for American Trade. ECAT is an organization of 64 U.S. companies with extensive international business operations. Worldwide sales in 1979 by these companies totaled \$450 billion, and they employed nearly 5 million people.

With your permission, I would like to submit my prepared statement and proceed with a summary.

An essential element of export trading company legislation is the provision for ownership of export trading companies by banks, bank holding companies, and international banking corporations. Banking organizations have two resources which are essential to establishing a viable export trading company.

First, through their retail banking operations, banking organizations are able to reach out to large numbers of small- and medium-sized companies who may manufacture exportable products.

Second, through their international banking operations and their correspondent banking relationships, banking organizations are in an excellent position to identify potential markets to customers.

U.S. exporters suffer one serious competitive disadvantage. They have limited export financing. To some extent, U.S. exporters can get export financing from the Export-Import Bank; however, the bulk of export financing is going to have to come from private commercial banks. Export trading companies, with commercial bank participation, provide the mechanism to increase the availability of export financing.

In this respect, many small- and medium-sized export trading companies could benefit from bank participation through joint ventures, or perhaps through at least a more sympathetic hearing for export financing by dealing with bankers who are oriented toward exports as opposed to domestic oriented loan officers.

Some concern has been expressed that export trading companies with bank ownership might have an adverse competitive effect on small trading companies. This has not been the case in Japan where there are 9 dominant export trading companies which are interrelated with major commercial banks. In spite of this concentration, Japan has, according to the United States-Japan Trade Council, approximately 6,000 trading companies. At this point, I would like to submit two charts that I have here which show that the major shareholders of six of the largest Japanese trading companies are banks or insurance companies.

The second chart I would like to submit shows that the source of loans to the major Japanese trading companies corresponds with their banking relationships. For example, the largest source of loans for Mitsubishi Corp. was Mitsubishi Bank. The largest source of loans for Mitsui & Co. was Mitsui Bank and so on.

In addition to bank participation, another important section of the export trading company legislation is the role that should be played by the Export-Import Bank. The bills pending before this subcommittee provide for guarantees and loans for operating ex-

penses and initial investments in export-related facilities as well as guarantees for export accounts receivable and inventories.

These are good programs. However, if they are going to be utilized effectively, the standards by which they are administered must be more clearly defined.

For example, I am not quite sure how a company would prove that an export would not otherwise have occurred without the financing. By the time they proved that, more than likely a foreign company will have obtained the sale.

I hope that this subcommittee will take a strong look at those standards in order to provide legislative guidance to the Export-Import Bank in order to provide programs that are readily available.

For example, I understand that the Japanese equivalent of our Export-Import Bank has certain programs where companies can draw on a line of credit without even submitting the contract to the bank. This gives Japanese companies a distinct advantage in negotiating international sales. Thank you for this opportunity to testify and, at this point, I would be happy to answer any question.

[Mr. Levy's prepared statement on behalf of the Emergency Committee for American Trade follows:]

TESTIMONY OF MR. CHARLES S. LEVY, VICE PRESIDENT
EMERGENCY COMMITTEE FOR AMERICAN TRADE
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE, INVESTMENT
AND MONETARY POLICY, HOUSE COMMITTEE ON BANKING, FINANCE
AND URBAN AFFAIRS ON EXPORT TRADING COMPANY AND
EXPORT TRADE ASSOCIATION LEGISLATION

JULY 1, 1980

I am Charles S. Levy, Vice President of the Emergency Committee for American Trade (ECAT). ECAT is an organization of 64 U. S. companies with extensive international business operations. A list of these companies is attached to this statement. In 1979, worldwide sales by these companies totalled \$450 billion and they employed nearly 5 million people.

Because ECAT member companies are among the largest U. S. exporters, they are well acquainted with the difficulties involved in establishing a viable export operation. ECAT members are also very much aware of the importance of exports to our national economic security.

Because of the complexity and cost of developing an international marketing structure, arranging for export financing and overseas transportation, and understanding foreign laws, tens of thousands of U. S. businesses compete only in our vast domestic market. Our ballooning balance of trade deficits would be substantially alleviated if these United States firms would take advantage of overseas market opportunities. Legislation designed to promote and facilitate the formation of export trading companies and export trade associations provide the means for U. S. businesses to focus on export opportunities.

ECAT, therefore, supports S. 2718, Title I of which is the Export Trading Company Act of 1980 and Title II of which is the Export Trade Association Act of 1980. We also support the legislative initiatives in this area undertaken in the House by Congressmen Neal, Reuss, Bonker, Bingham, LaFalce and AuCoin. The body of legislation introduced in the House and Senate provides constructive mechanisms to encourage and aid the entry of American business firms into international export markets.

The legislation being considered by this Subcommittee would facilitate the formation of export trading companies. These companies would provide the export-related services which thousands of U. S. businesses, particularly small and medium sized companies, need in order to realize their export potential.

An essential element of export trading company legislation is the provision for ownership of export trading companies by banks, bank holding companies, and international banking corporations. Banking organizations have two resources which are essential to establishing a viable export trading company. First, through their retail banking operations, banking organizations are able to reach out to large numbers of small and medium sized companies who may manufacture exportable products. Second, through their international branches and foreign correspondent banking relationships, banking organizations are in an excellent position to identify potential foreign

markets and customers.

Some concern has been expressed that export trading companies with bank ownership will have an adverse competitive effect on small trading companies. This has not been the case in Japan where there are nine (9) dominant export trading companies which are interrelated with major commercial banks. In spite of this concentration, Japan has, according to the U. S.-Japan Council, approximately 6,000 trading companies.

As Jerry L. Hester, President of International Trade Operations, Inc., a small export trading company, pointed out to the Senate Banking Subcommittee on International Finance:

"The biggest single exporting deterrent to an active growing export management firm is its ability to have readily available short-term capital reserves in order to bid competitively and move goods quickly."

In short, without adequate and timely financing, U. S. exporters are at a serious competitive disadvantage. To a limited extent export financing can be made available through the Export-Import Bank. However, the bulk of export financing must come from private commercial banks. Export trading companies with commercial bank participation provide an appropriate and efficient mechanism to increase the availability of private export financing. In this regard, many small and medium sized export trading companies could benefit from bank participation through joint ventures.

While we wholeheartedly endorse the enactment of export trading company and export trade association legislation, we do offer the following specific comments:

1. Export trading company legislation, or its accompanying legislative history, should clarify the extent to which an export trading company has the authority to engage in the business of importing goods and services into the United States. For example, a growing volume of international trade now involves barter arrangements and third country trade. Without clear authority to import into the United States, a U. S. export trading company could find itself at a distinct disadvantage in participating in barter transactions.

2. A number of the bills under consideration include provisions which would increase the financial leverage of existing export trading companies and stimulate the formation of new export ventures by providing (1) guarantees and loans for operating expenses and initial investments in export related facilities, and (2) guarantees for export accounts receivable and inventories. If these two new programs are to be utilized effectively, the standards by which the administering agency evaluates the need for guarantees or loans must be more clearly defined.

As presently drafted, these provisions require the administering agency to determine whether the assistance provided would facilitate the expansion of exports that would not otherwise have occurred. In addition, the agency would

have to determine whether the export trading company is unable to obtain sufficient financing on reasonable terms from other sources and, with respect to guarantees, that such guarantees are essential to enable the company to obtain adequate credit to continue normal business operations.

Without clarification, export trading companies may encounter difficulties in demonstrating their need for assistance from the administering agency. As a result, the agency may either be reluctant to use its new authority, or alternatively the administrative burden on applicants would be so great that export trading companies would not apply for the loans or guarantees.

From time to time, President Carter has highlighted the importance of exports to the future health of the U. S. economy and announced his dedication to developing a coordinated national export policy. To date, little has been done by the Executive Branch.

U. S. business is looking to the Congress to play a major role in formulating a national export policy. The legislation before this Subcommittee is an important first step in developing such a policy.

It is not clear how many export trading associations or export trading companies will be formed under the proposed legislation. But it is clear that for those companies which utilize either form of doing business, these two mechanisms will be important and immensely useful in enhancing their competitiveness in world markets.

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Zapata Corporation

Chairman NEAL. Thank you.
Now we will hear from Mr. Hester.

**STATEMENT OF JERRY L. HESTER, PRESIDENT,
INTERNATIONAL TRADE OPERATIONS**

Mr. HESTER. Good morning. I am going to speak to you this morning as a small business export trading company. I am the president of International Trade Operations. We have another company, International Trade Overseas, Inc., which is a DISC under the Internal Revenue Act. We have been in business since 1966.

This company started with myself and my wife and a lot of brain power and no money. As most small businesses, we worked for large companies for many years, and we decided that we knew as much about the international business as some of the American companies we were working for at that time, and being an engineer and educated in North Carolina, with a little bit of entrepreneurial spirit and what my good parents gave to me, I decided to go ahead and have a go at it.

At that time—this was 1966—I began to foresee a technology boom, and I felt that this would be a right time to get into the technology and the export business, especially helping small- and medium-sized companies. Well, lo and behold, the first client I had was a very large corporation. Because they had no international staff, they felt that I knew as much as their staff, and they gave us a very large contract. This company was ITT. The reason we got the business was because ITT had a very large international company, but an overhead quite large that prevented them from being competitive in the market. So by selling to us as a domestic company, we, in turn, sold it as an international sale, and we made a very large transaction for ITT.

The reason I mention this is because it shows the role of small business helping in the international field in creating exports.

Now, our company is a microexport trading company of, I think, the stature that this subcommittee is trying to cause to happen. We are for export trading companies, since we are one of them. We have grown every year since our inception. So I think I know how this method of business operates. Just having returned from Saudi Arabia, sweating in 120-degree heat, I think I know what causes business to happen.

We have a very large amount of information available to us in this country, as these other gentlemen have testified. They are successful in the export business. I think they can all testify, as you will hear tomorrow from your government sectors, especially the Commerce Department, our foreign trade offices abroad sponsored by the States, various trade associations—all of these have a large amount of information available to the exporter.

We in the United States are very spoiled. We are used to getting all we want very easily, and hopefully to get as much profit as we can as easily as possible.

Well, the export business does not work that way. It works with a lot of hard work, and I find one of the hardest things I ever had to do in my exporting is work with the banks. And this bill which is before this subcommittee—or these two bills, rather, H.R. 7436 and H.R. 7463, address that problem right off. I will try to concern

myself with the banking role as I see it in exporting and how this can benefit us as small- and medium-sized exporters, because really, the legislation—and I believe the intent of the legislation is to gather together large numbers of companies, get their combined talents and products into the marketplace, because I believe—I do not have the exact figures, but I believe that 70 percent of the business in this country is small business.

My experience has been, when I go to a small business or a large business or a medium business and ask for a product, if I as an export trading company know what I am talking about, appear to have some credibility behind my request, I always get the response from the company in both the product, a good price, and cooperation to do the export. And then they give the job to me, and I have to go on with it and get the business transaction completed and make the sale.

Now a bank comes into this picture after I have done all the work. I usually do not face the banking problem until at the very last I say, OK, I have got to pay for the goods. At that point, then you go to your bank if you need credit, and you say, you know, we have \$100,000 line of credit; we need \$20,000 of it to pay for these goods immediately, if that is the case.

But most transactions take place on a 30-day net terms basis, which is sufficient in exporting, in my opinion, to collect your money if you are working on letters of credit. If you are working on open account terms, then certain countries are very slow in paying, so you do need the bank to finance you to pay your supplier.

I have yet to see a role or a lost transaction in my business where a bank caused me to lose the transaction due to its failure to cooperate with me, and I have yet to see a bank, because it was not a part of my company, cause me to lose business. I do not know enough about this matter of what the bank role and the implications of a bank being an export trading company are going to cause, but my first reaction is, it is more trouble, especially to a small- and medium-sized company, and if I am a small or medium-sized export trading company, it is another person you have got to face up to, you have got to report to. It is like another partner in the business.

It creates more paperwork, more overhead, and the question I look at is, the bank is not in business for the fun of it. He is in business to make money, and if he is loaning money to an export trading company, he has got to loan it at the going rate, or he can make more money loaning it on homes or some other activity.

So let's say 10 percent, to take a figure, 10-percent add-on to the margins we are facing today in the export trading business might be too much to throw us out of a competitive situation.

When I testified before the Senate subcommittee on this very subject, I made a point that, look, we can't afford 10-percent money in trading companies. We have got to have somewhere on the order of 3 to 6 percent, and unless you can come up with that kind of money to support the export program—and I am sure that these foreign banks with these foreign trading companies are giving them favorable terms—you are not going to have a very favorable situation for a bank to get into a trading company. My experience

with the banks are that they do not do you any favors. They are going to do what the bank's policy is and you have to work with what they are willing to give you.

To become an export trading company, in my opinion, and to qualify under one of these bills, I believe that your qualification procedure is a little bit too lax. I think it should be something more of the order that the export trading company should have some experience, a track record of some sort; it should not be a paper operation that can be created overnight. You cannot attract American businesses to a paper operation with no experience behind it, no people behind it who know what they are doing, and expect these people to cooperate with you in a business venture. You might get them once or twice, but the second time around you are wasting their time. You have got to be able to fulfill your role as an export trading company.

So I think you need a track record. I think you need a net worth of at least \$100,000—more like \$250,000—to qualify as an export trading company under this act. And I think that the bank relationship is very important. If you do not have an established banking relationship, I do not see how you can do business in the export field today. The banks rely upon your credibility when you come to them for your transactions, and they do not have a staff nor do they have the day-to-day expertise in the marketplace to pass judgment on your business transactions. So your bank relationship and your bank credibility is very important.

You can take the cases of some of these banks that have gone under in international transactions, and you see where the credibility problem arises.

Let me give you a case of where we are sometimes working against ourselves in this exporting business. The U.S. Government spends a lot of money in the AID programs. Under AID programs many times these are a mixture of various products and services. We are working on one right now for Egypt, where they are buying approximately \$5 to \$10 million worth of motor vehicles with U.S. AID money. Participants with us on this project are the Ford Motor Co. Export Division, the Heil Co., out of Chicago, and six other truck body manufacturers. This bid is worth \$5 million. The AID required a 5-percent bid guarantee on this project, which means that me as a small business exporter, had to come up with 5 percent of \$5 million.

Here, neither one of these companies—Ford Motor Co., or these other companies—could bid the project because it was a mixture of various equipments and motor vehicles. So they came to us because we were willing to take on the case and willing to go and do the prime contract work on the project. Neither one of these companies, with the vast resources of Ford Motor Co., would help us in putting the bid guarantee together; yet we go to the bid guarantee pool in our line of credit and we put this in the bank and it is tied up.

Well, we have created export for Ford Motor Co., and if we are successful, we have created export for 5 or 10 other companies who would not have received this business. But we as a small exporter, with limited resources, are now restricted in the next job we are

going to bid because we cannot bid another one like this in the very near future because we are restricted in our resources.

So, what I see here, the way to pyramid and get this effect going with this legislation is to grant qualified export trading companies who can demonstrate that they can create this kind of business, give them every encouragement and financial resources and guarantees possible. The only way I know to do this is through the existing mechanisms you already have set up in the Government and through Government agencies like Small Business and Eximbank. But I think that Small Business lacks the experience on the international side, so maybe Eximbank is the way to go with these guarantees.

But we would take guarantees extended by these agencies, let us say, \$1 million or \$2 million, and use these guarantees to go into these large projects which these foreign export trading companies are participating in which no American company of our size and only the very largest corporations can get to because of these restrictive initial deposits required to get this business. And we are not talking small potatoes here; we are talking \$20 million or \$30 million projects.

I just returned from Saudi Arabia, as I mentioned earlier, and we were asked to participate on a workers camp. This workers camp is going to cost about \$7 million. I have a company in Florida who can do the job. But it is up to me to put up all the bid guarantees.

Now, should I turn down this bid opportunity and export opportunity, which is specified American technology, for lack of working capital? The answer is: Sometimes I have to. And sometimes I should not have to, but that mechanism is not present today for an export trading company of my size to create that kind of export. We have to do it by any way we can. That is one thing I see lacking in this trade expansion activity that this Congress should address itself to are the medium- and small-sized trading companies, of which I am sure there are 100 to 200 in this country today, that can do the job you are looking for them to do.

But another question I have on this kind of legislation is: Where are we going to get all the resources and manpower and the experience to man these trading companies? We are talking about 50, maybe 100 trading companies if this bill passed would come into business within 30 days. There is not that kind of talent in the United States to man these trading companies. It is going to have to come from expansion—and slow expansion—by the existing operations that you have in the companies today or in companies like ourselves.

If I had \$1 million capital today dropped on my doorstep, I really frankly do not know where I would spend it. I do not think I would go out and start printing brochures; I do not think I would go out and start attending trade conferences. I think it would take us 2 years to figure out where to apply these kind of funds: Do we open up offices? Do we go overseas with the offices? What do we do with it?

It is not an easy problem to legislate, and I sympathize with you in your task here on this subcommittee, to legislate good, solid

legislation that will do the job that I think the country wants us to do.

In summary, in small business, I think we are on the backbone of this country's export program, and I think attention should be given to those companies who can provide us the growth and have the background to go after this job and give them some kind of support that they have the financial backing not only of their banks but also of the agencies already set up. I am not so sure that banks participating in export trading companies are going to do the job that you are looking for here today.

Thank you very much.

Chairman NEAL. I would like to thank all of our witnesses for coming this morning and helping us with this.

I want to play the devil's advocate for a few minutes on this banking issue. Let me make my position clear first. I want to make sure that our country again becomes the world leader in export, for a number of reasons: not only to address the problem of our balance-of-trade deficit, but because I can see that it will have a tremendous impact on employment, on the rate of inflation, and broader implications for peace in the world.

It seems to me that we certainly have established good trade relationships with countries and, on that basis can work toward greater stability and peace in the world. So I do not want to do anything that will weaken this concept.

But I want you to know that, as I said, the FDIC is opposed to the idea of the banks being involved. I understand the chairman of the subcommittee, who has jurisdiction over this particular aspect of this legislation, has serious objections, or certainly wants to take a careful look at it. I certainly don't want to speak for him. We have a long history of separation of banking and commerce in this country, and I would like to be in a position of having a strong argument for making this concept just as strong as possible. I do not think we have yet addressed some of the kinds of questions that we are going to be dealing with here.

Now, Mr. Cooper, you say in your testimony that there are compelling reasons to make an exception in this instance for banks to be involved in these export trading companies, but you do not mention any of these compelling reasons. I would love to hear some of them.

Mr. COOPER. First, let me say that I share your concern with keeping banking in the traditional banking format and separating it from commerce. I think the early history of banking in the United States gives us documentation that the banks should be kept in banking. However, I think this bill has many of the limitations and guidelines to protect against banking abuses, and maybe the reason I did not give some of the values of having banking participation is because they were so obvious to me.

Chairman NEAL. Maybe you could give me a few now.

Mr. COOPER. Let me try. I wish I could communicate, say, one day competing against our largest Japanese competitor, Mitsubishi Heavy Industries. They make equipment identical to ours. It is a frightening array of competence that they and their banks bring to business in any country Eastern Bloc, Western Europe, South America. The same thing is true in a different way with our

competitor, Pittler Machinefabrik in Germany, backed up and partially owned by Dresdener Bank and the Deutsche-Bank.

Now, what specifically is it? It is branches of those banks, offices in every country, language ability, advice on how you protect against in your pricing and in your terms, with a knowledge of what is most likely to happen in the currency in which you are placing the order.

We get some of this competence in Cleveland because Cleveland has a lot of exporting companies. Not as many as it should, and I would like to see more companies there because there are hundreds of small companies, \$10 million, \$20 million, \$50 million, sales that have exportable product, but they cannot afford the staff and the management energies to weave their way through this complex matter. And each country is different.

Chairman NEAL. Mr. Cooper, you also said, as an argument for your wanting the bank involvement, that the export trading companies need adequate financing. But every domestic company needs adequate financing; yet we do not allow banks to own domestic companies. Would it not be possible for export trading companies to contract with the banks that have international operations to perform the very services that you are talking about, just as domestic corporations contract with banks for a whole range of services? In other words, it doesn't follow as night follows day that since an export trading company needs finance that it needs to be held partially or totally by banks.

You mentioned German involvement. It is my understanding that the German banks own a huge percent of all German industry. It is a whole different system. You mentioned Japan; government banks and industry in Japan are almost as one. In many, many areas, a tradition totally different from our own—and effective. I can't deny the effectiveness of it. But certainly, it is simply not in our own tradition. We can learn from it certainly, and we should learn more. But, well, you can see the kind of questions I have.

Mr. COOPER. Your point is well made. I am glad you recognize the strength of these combinations.

Chairman NEAL. The French nationalized their banks. I guess they have been nationalized for a long time. But, again, that is not in our tradition. I am sorry to have rambled on. But on this specific question, why would it not be possible or desirable for export trading companies to contract with banks, who are obviously seeking business, to perform these services that you mention?

Mr. COOPER. Of course, that is what we currently do. We do not, perhaps, contract, but we shop around for the bank that can be most helpful to us in the country and with the type of transaction that we have. Our problem is a little more complicated than some, in that some of our orders are, for us, quite large: \$10 million to \$20 million or \$25 million spread over maybe a 2-year period, 2½-year period, with the requirement for financing of the contracts in process.

And we have used Export-Import Bank for some. Not very many, because that is a cumbersome procedure for a relatively small Cleveland company and Export-Import Bank has not been committed. We lost a \$28-million order to build a tractor factory in

Poland. Our price was competitive, but the financing from the West Germans and the English was 5 to 7 percent, and our contract with the Export-Import Bank was appreciably higher than that.

Chairman NEAL. But how would that change if banks owned part of export trading companies?

Mr. COOPER. Well, I think if the banks had a stake in the export trading company—I mean an investment stake—and if several companies in the Cleveland area can have a combined resource to draw on—at one time it might be our company being financed and another time it might be one of the other member companies—

Chairman NEAL. You are suggesting that banks would lend at a lower rate to a company that they had an interest in?

Mr. COOPER. No; that was a diversion. I was just trying to point out that the Export-Import Bank is not always the answer when you are competing with foreigners, and I see no help with that particular problem, because an export-import trading company would have to be run to earn a profit and it could not subsidize. I did not pretend that to be an answer.

Mr. HESTER. I think one of the points that I was trying to allude to, Mr. Chairman, was that, as you recall in my testimony, we have got to have it at 3 to 6 percent. His testimony corroborates that. You have to understand that the Japanese and Germans and the other trading companies do not look at the export as a transaction they have to make a profit on or a major profit on each time. They look at it as a survival method of doing business. The Japanese, if they do not export, they do not survive. So consequently, they look at it as, you know, it is better to keep the people employed and maybe not make so much profit, than to put them out of work and put them on welfare.

Now, in this country, we take an attitude, you know, we have to make 10 percent on every transaction, we do not make it, we do not get the transaction. What he just testified to proves the point. Everybody thinks the interest rate on every transaction, as far as the bank's concerned, has to be 10 percent or the prime rate. I never heard of a transaction since I have been in business below the prime rate.

Chairman Neal. Mr. Hester, would you be concerned that if we allow bank participation in these export trading companies, they might be so big and powerful that they might run a small business like yours out of business?

Mr. HESTER. Exactly. I do not see how I could survive as a small business or a medium business if I get below—I would say a small business is below \$5 million. This year we expect to do more than that. But, let us say, a small business or a medium export trading company, I do not see how industry would go and work with us when they could go work with a bank trading company—or a trading company run by a State development agency, which has been proposed in some of the legislation before the Congress.

If the State of Virginia, the State of Maryland, or the State of New York set up a trading company, why should an exporter or a company in that State come to me when he could go to the State company which is obviously going to be subsidized, have more resources, have more things at his disposal paid for by the taxpay-

er? It would run small business, private business, out of the picture.

Chairman NEAL. The ability of the States to engage in this sort of business is not in my bill. But still I think your comment on your competitive position is an interesting one. It is one I think we ought to look at. I mean, I do have some questions, but I would like to yield to Mr. LaFalce.

Mr. LAFALCE. Thank you very much.

I share the sentiment of the chairman in the excellence of the presentations this morning. And I think that in large part that there is unanimity. I would rather focus in on those parts where there appears to be some difference of opinion, however.

Now, Mr. Hester, I say this very respectfully, as a devil's advocate, it seems to me that the impression I get from listening to you is that you are very supportive of exports, of course, and of trading companies, but that you do not want anybody interfering on your turf; that, you know, you might have a good thing going; and that if there is competition from the banking community, then it might interfere with that good thing.

And if we are going to expand exports tremendously, how are we going to rely upon the existing export trading companies? Aren't we going to have—must we not have a great many more export trading companies than presently exist? You say there are 100 or 200 in the United States.

If we are going to help small businesses, it seems to me that we need not just small export trading companies, but large export trading companies in order to help the millions and millions of small businesses throughout the United States who are not involved in exports or are not involved in export trading companies who are not going to be able to do with the existing 100 or 200 small export trading companies. Would you care to comment on that?

Mr. HESTER. I think the millions of small businesses that would be attracted to the export field already know where to go if they want to export. I don't know of any business today that can't pick up the phone and call the chamber of commerce, or call their bank, or call their State development office, and they will not put them in touch with someone who can help them in the private sector.

My phone rings two or three times a day with these kinds of calls, people wanting help—can you do this, and can you do that?

There is no reason they do not know where to go to contact. I just can't believe that. With the millions of dollars the Government spends on export promotion, trade missions—my gosh, the papers and all the trade journals are full of it. Every trade show you go to, there is a booth for international business and exporting; whether you go to the Chicago Boat Show or the High Point Furniture Market, there is an export booth set up for just this purpose.

Let me address the question of whether we want somebody in our business. The more business that we can generate, the more it helps everyone. Of course, when you go overseas and see the competition—and I go once every 3 or 4 months—rarely do you see the American out there doing the hard work that has to be done. This is part of the problem in the export promotion business, doing the

day-to-day work. It is the staying power of the American businessman in the marketplace.

You find Japanese and Germans that are relegated to the role of 6 to 7 weeks—you stay here until you get a contract. No American businessman will do that. He says, "Take my product. I am here. I am ready to do business. And, you know, I will keep plugging away for awhile, but if I do not get success here, I will go somewhere else or do something a little easier."

Exporting is not easy. And when you talk about the bank role in exporting, I have never been turned down when I go to a bank and have an export proposition. I certainly do not want to report to another person, as I would have to do with a bank if the bank is a shareholder in my company. Then you have got to report to a shareholder.

Mr. LAFALCE. Mr. Hester, my point I think is being missed. I think if we had a lot more Jerry Hesters we would improve our trade deficit posture tremendously. But as you pointed out, there are not too many of our own people with track records, with expertise. We would have a big problem.

And I want to, you know, expand that 100 or 200—and those are your figures—to at least 1,000 in a relatively short period of time if we possibly can. Now, maybe we can't.

Mr. HESTER. If you would just look at the banks' side. I don't know of more than 10 banks that I would do business with in international business that have a qualified staff that you can do business with. I would say there may be 10, maybe there are 50 in the United States—let's say 50, 50 banks that have real, qualified international departments.

Many of them are interested in it, but when you go—finally talk to them and look below the surface, you don't find much capability there.

Mr. LAFALCE. Why have they not developed that competency?

Mr. HESTER. Because their customers have not demanded it. The people in North Carolina, Virginia, or Texas, if they came in every day with an export transaction, the banks would have to do something about it.

Mr. LAFALCE. So there has not been that demand for their customers for it, so they have not provided the service.

Mr. HESTER. Exactly.

Mr. LAFALCE. And yet the banks' customers, the businesses in America, probably do have products that could be sold in international markets; correct?

Mr. HESTER. Absolutely.

Mr. LAFALCE. But these businesses are not seeking that international market out because of some reasons: One, they don't have the expertise themselves. Maybe, second, they are unaware of how to go about selling overseas; correct?

Mr. HESTER. Yes.

Mr. LAFALCE. Now, we do not have small businesses seeking with expertise in the international market, and we do not have financial institutions trying to develop the expertise presently, nor seeking businesses in the United States to export overseas. And we do not have enough small business trading companies—or export trading

companies to have that significant of an impact insofar as our exports are concerned.

And so the question is, you know, what do we do? What do we do?

Now, one suggestion in the many bills before us that are backed by Mr. Cooper or Mr. Levy would permit financial institutions' participation in export trading companies, I would imagine, to give them adequate enough incentive to become involved in this in a wholesale way.

Now, what would be wrong with that, Mr. Hester? What would be wrong with that?

Mr. HESTER. Based on my experience in small business, I think the only thing I could answer to you to answer your question would be that—are you talking about banks, local banks, or are you talking all banks?

Mr. LAFALCE. I am talking about all banks.

Mr. HESTER. All banks.

It would seem to me that if there is a difficulty coming up with reasons why there would be something wrong with it, maybe there would not be too much wrong with it.

Let me go on.

Mr. Levy, I am a little confused as to why you have such a great concern about the creation of export trading companies when you represent, almost exclusively, the largest corporations in America. You know, it looks like the top 50 of the Fortune 500.

Now, are they that interested in export trading companies? I thought these export trading companies were primarily to assist the small business community. And, you know, Burroughs and Caterpillar Tractor, and so forth, Borg-Warner, they have got expertise of their own. So, other than for reasons of the public interest, what are your special interests?

Mr. LEVY. I am here for three reasons. First, I am here because of the public interest in this legislation. The companies I represent are committed to exports and would like to see more U.S. companies involved in exporting.

The second reason is that ECAT represents some banks who are interested in the export trading company legislation. This does not mean to say that these banks are going to form export trading companies. But they certainly would like to have the option available.

Finally, title II of the bill does provide a higher degree of certainty under the Webb-Pomerene Act. Thus the bigger U.S. companies could form joint ventures and submit joint bids on projects such as their foreign competitors presently do.

Mr. LAFALCE. Let me ask you the question that Chairman Neal asked Mr. Cooper, playing devil's advocate a bit: Can't the financial institutions contract their services and do virtually everything for export trading companies through a contractual arrangement that they could do if they had an equity participation in the export trading company? And couldn't they make this financially attractive enough for themselves through the pricing of their services?

Mr. LEVY. I am not a banking lawyer, but I do not think so. As I look at the definition of export trade services, in section 103(a)(4), these services include consulting, international market research,

advertising, marketing, insurance, product research and design, legal assistance, transportation, and so forth. I believe that under existing U.S. law, banks are limited to providing financial services. In short, they could not put the whole package of services together.

Mr. LAFALCE. Mr. Hester suggests you are wrong.

Is that correct?

Mr. HESTER. That is correct. A bank could not provide these services, only the financial service.

Mr. LAFALCE. Oh, you are suggesting he is correct?

Mr. HESTER. That is right.

Chairman NEAL. Would the gentleman yield to me?

Mr. LAFALCE. Yes.

Chairman NEAL. What I had in mind with the original question was, it seems to me that those that support bank participation do so for the reason that they think it would generate more interest on the part of banks in providing a range of essentially financial services, but also such things as Mr. Cooper mentioned, a knowledge of local economies, language abilities, and so on.

What I was trying to get to is the question of why banks would not be interested in selling those services to export trading companies just as they sell checkwriting and a whole range of other services.

Mr. LEVY. I think they are interested in doing it and see this legislation as a vehicle.

Mr. LAFALCE. He is suggesting that they can't legally do that.

Mr. LEVY. A bank is presently prohibited from providing marketing services or selling insurance or providing transportation services. The bills that provide for bank participation in the trading company are, in essence, providing an exemption from existing U.S. banking laws for only the purpose of exports. Banks could not sell these services domestically for domestic sales.

I do not see any authority under this law for a bank buying into General Electric. They are not going to own the manufacturing company.

What the trading company with bank participation is going to be doing is selling its expert related services to a U.S. company.

Chairman NEAL. Then your goal would be achieved if we made changes in the law adequate to allow the banks to do all of these things you want it to do, without necessarily allowing ownership in the export trading company itself?

Mr. LEVY. I would think that would be possible. But I also think the export trading company act is the way to do it.

Mr. HESTER. For example, Chase Manhattan Bank has a company called Chase International. The function is somewhat like Dun & Bradstreet. For \$500 to \$600 a year, they will provide you with marketing intelligence, all kinds of information on a country, all kinds of documentation assistance. They publish a tremendous book, and they update the book monthly. This is contracted for, and it is the only bank that does this, Chase Manhattan. But it is the closest to a service that is useful to an export trading company I have seen.

Mr. LEVY. I think there is another point. One of the problems—you see it in terms of the reorganization of the executive branch in terms of international economic policy and exports—and that is

you can't have companies running from one office to another office to get information. It's the same thing if you are going to put an export package together, one company should be able to handle it, whether it is the financing or the documentation or the transportation.

The small exporter wants to export. He should be able to go to one place.

Chairman NEAL. I quite agree.

Maybe an adjustment in the law is necessary; I am not sure. But if it is, then certainly it would be doable, I think, in this Congress.

The banking system is so important to our own domestic economy in terms of the money supply and the critical role of the financial intermediary for almost every person in the country. And I guess that is the concern. We do not want to weaken that system, to add a risk to that system that does not exist.

All I am suggesting is that it might very well be possible for the banks to sell a package of services to you or I or an export trading company, still keeping themselves at arm's length from that particular firm.

Mr. LEVY. We all share your concern about the safety of the banking system. But something has gone wrong. The United States does not live in the 1950's and 1960's any more, when we were economically dominant, we could absorb the imports, we could export, because we are basically the only country that had the resources to do it and the production capability to do it.

This is a new world. And I think that we have got to try some new approaches. I am not prepared to say that bank-owned trading companies are a panacea for U.S. exports. The point is that we have got to look around the world and see what other countries are doing; and they do have trading companies with bank involvement, and maybe we should try it. But we do not have safeguards to protect the domestic banking system.

If you look at a number of the provisions in S. 2718 and in Congressman Reuss' bill you will find the necessary safeguards. The banks can't go in and invest enormous amounts of money. They are limited in the capital that they can invest in and loan to a trading company. If they want to invest more, they have got to get the approval of the appropriate Federal banking regulatory agency.

Given the limited nature of bank involvement provided for in these bills, it is worth seeing how it operates.

If these bills provided for open-ended, trade investment, there might be a real concern. But given the safeguards that are in the bill, I think it's important for us to try the approach and see how it operates.

Chairman NEAL. You know, isn't the heart of this bill the anti-trust exemption that would allow small companies, large companies, all sorts of companies to cooperate for the purpose of expanding international sales?

It seemed to me all along that that is the key element, the real heart of the bill.

Mr. LEVY. That is extremely important.

Chairman NEAL. And if they are organized and prepared to engage vigorously in international trade, financially able, with ade-

quate expertise and so on, then it would seem to me that the financing will be available to them and there will be, in fact, a number of banks competing with each other for this business, naturally.

Mr. LEVY. I think that you are right. The antitrust part of the bill is very important, but I think that the banking part is equally important.

I think that we can't begin to try and solve problems by picking one way to solve them and saying that is going to be the solution. I think we have got to look at a panoply of ways to deal with what is a very serious problem in the United States.

Chairman NEAL. Please. I am not absolutely convinced. I am trying to ask questions. But you say it is important; Mr. Cooper says it is important; but tell me why?

Mr. LEVY. I think it will bring the banks into an active role with respect to exporting, and they will be able to be more responsive to committing resources to financing exporting.

Mr. LAFALCE. If I might interject for a second. First of all, I think that Mr. Cooper initially put it quite well when he said, you know, how we should be concerned, if are going to take steps, that we not merely take half-steps; and that an export trading company bill without financial institutions' participation would be a half-step. We would not give up that half-step, we would want that half-step. But we would want the world to know that it is only a half-step, not a full step.

Now what is so good about the full step? It is not just a question of financing. It is a question of having the resources of the financial community in virtually every single city of the world in strength, so wherever the market is, you might not have a Borg-Warner, you might not have an export trading company, but you certainly would have the major U.S. financial institutions in every major city in Germany, in every major city in Japan, in every major city in every single country of the world.

Therefore, you have a base there, a source there of expertise about the customs of the community, of knowledge of the people who make things go in that community, have contacts with the chamber of commerce or the counterpart in that community. It's an available resource.

We return to the question that the chairman rightly keeps posing: But why couldn't we, if we have to amend the laws, simply to permit a contractual arrangement for the provision of these services? And I would suggest that it is the same reason that any human being would act or not act for.

If you say to an individual, we would like to hire you at a certain salary, you might well get him to come from corporation X for performing a certain service; you might not. It seems to me that you would be creating a much greater incentive if you say, we will give you a piece of the action; we will give you an equity position in our business.

If you want to get a corporate executive with IBM or, you know, with any business in America to come to your firm, you would better be willing to talk about an equity position in your firm. That is what he wants. That is what is going to create the incentive for him to become involved in a meaningful way.

And there is no way of quantifying, you know, well, couldn't they possibly do it in some other way? Yes, but unless they have got that equity participation they do not have an adequate enough incentive.

We know what incentives are all about. Incentives are something that we try to create all the time through the tax code and a whole slew of other ways.

Chairman NEAL. Will the gentleman yield?

Mr. LAFALCE. Yes.

Chairman NEAL. How have we been able to interest domestic banks in financing domestic enterprise all these years? They do not have an equity incentive. Yet GM or IBM or my little company, when I had it, were able to get financing.

Mr. LAFALCE. And the financial institutions of America are in fact financing exports, as they are financing, you know, domestic concerns. They are not prohibited. We are talking about giving them added incentives. You know, they have got a limited amount of funds, and what we are trying to do is get them to utilize those funds for the stimulation of exports, because it is our judgment that the stimulation of exports is going to be good for the overall economy of the United States.

So what we are trying to do is create a special incentive exclusively for the purpose of exports. That is why we have an Export-Import Bank, too, exclusively to stimulate the export of American goods and services.

Let me make another point, too. It is not unheard of in toto to have equity participation by banks in American enterprise. The Congress has permitted it through small business investment companies. It was our opinion that small business investment companies are so needed in order to provide a source of equity and venture capital that we should permit the financial institutions of America, on a limited basis with controls, to have equity positions, to own SBIC's.

So we do have a number of SBIC's in America owned by banks. And these SBIC's owned by banks are then taking equity positions in various small businesses throughout the United States of America. The concept is not new, and certainly we would not be doing very much more for export trading companies than we are doing for SBIC's.

So in answer to your question, why do we not do it domestically, my answer is we already do it domestically for special purposes such as equity and venture capital.

Chairman NEAL. That is a very good point, I think. In fact, I got my little business started in that very way. I could not get capital from another bank.

But let me ask this question: Is financing the main problem or even a substantial problem in this whole area? It has not been my impression that it was. It has been my impression that adequate financing has been available for any worthy export project. Maybe the terms have not been right, so we have created the Eximbank.

Mr. LAFALCE. I hate to answer when we have witnesses, but on the one hand we are talking about financing a small business who wants to export; on the other hand, we are talking about the creation of export trading companies to go out and stimulate busi-

nesses to try to export. And what we are primarily trying to do in this bill, or in the various bills, is create more export trading companies.

You may want to expand upon it.

Mr. HESTER. My question is: Where is the money going to come from to operate the export trading companies? The banks are going to put the money in the export trading companies? If the export trading company does not exist today, you are going to come in with equity capital?

Mr. LaFALCE. Precisely.

Mr. HESTER. As I testified before the Senate Banking Committee, you are talking \$500,000 minimum to start up.

Mr. LaFALCE. I think they can afford that. That is precisely the point. They might be the only ones who can, in order to help the small businesses of America take advantage of small business trading companies.

Mr. HESTER. \$500,000 is domestic. Then you have got to have your overseas offices. You can't operate an export trading company with just a domestic office; you have got to be in all the cities in the world.

Mr. LEVY. They have got the overseas offices.

Mr. LaFALCE. They have got the overseas offices. That is the whole point.

Chairman NEAL. The export trading company has the overseas offices?

Mr. LaFALCE. The banks do that would be permitted to export.

Mr. HESTER. They could not help you in the manner which you are talking about, as far as doing the complete transaction. The bank overseas offices do nothing but correspondence.

Mr. LaFALCE. Maybe right now.

Mr. HESTER. You are talking several million dollars to set up a worldwide network that can do business as an export trading company.

Mr. LaFALCE. Precisely.

Mr. HESTER. Then where is that capital coming from?

Mr. LaFALCE. From the financial institutions.

Mr. HESTER. They would not loan that kind of money on a venture capital basis.

Mr. LaFALCE. We are not talking about venture capital.

Mr. HESTER. I do not see how they would do it. Knowing Riggs Bank in Washington, I do not see how they would do it.

Mr. LaFALCE. Then there is no problem. We would pass the legislation and they would not use it.

Chairman NEAL. Let me ask this. It seems to me—and please correct me if I am wrong—that we have several problems in creating more exports: One, probably the most important, is our own rate of domestic productivity. If we want to start at the top of the list, we need to improve that, to make our own country more productive, more competitive.

Then, next in importance, probably, would be the fact that we're not playing on a level playing field. We are playing against players that subsidize their exports. The French are the most notorious offenders, but all of our trading partners subsidize their exports to a greater extent than we do.

We do not want as a country, yet at any rate, to get into the business of subsidizing exports. We have, through legislation and through very able aggressive management on the part of the Eximbank, become more competitive in world trade. The Eximbank has met competitive terms in several cases. This subcommittee urged them and pushed them through legislation into that posture, and they willingly accepted that role.

But we are still not at the point of subsidizing. We do not want to. We are negotiating with other countries to reduce the subsidy levels so that products can compete on the basis of quality and service and so forth—and price.

But then we go down the line. We have got some tax policies that are discouraging trade, discouraging Americans living abroad, and so on.

But none of those problems, none of these major problems that I have mentioned—and there are some others—are addressed, it seems to me, by the ability of banks to set up export trading companies. Or maybe I am missing the point. Please correct me if I am wrong.

Mr. HESTER. I think you are exactly correct, because I never answered this question—we got off on another point—when he asked me, did I think export trading banks should participate in export trading companies. I have been thinking here since he posed that question to me. And maybe the correct solution would be to use the vehicles we have already set up and to bring your export trading companies under the Department of Commerce.

And when you have a transaction wherein you have financial type problems, I think there would be a mechanism where these banks could be made available to a trader or trading company to provide any financial activity required on a particular transaction for the sake of winning the transaction, much the way as we do in our domestic business, where, like for example, the Chrysler Corp. They brought in 5 banks or 10 banks to solve that problem.

If we have a problem that needs solving in the export field, the Export Trading Company Trade Expansion Act is supposed to set up some kind of procedure through the Department of Commerce. And you know, we have an office we go to and say, OK, we have got a problem here and we need more banks in the picture.

But a day-to-day participation by the bank, I still am quote—I just do not see how it can help the expansion of trade, because any good transaction a bank would usually act on, much the way they do in the domestic business. Think of the procedure when you go to your banker and you want to put a transaction together. You have done all the marketing, you have done all the intelligence, and you come to your bank as a credible individual. And he has known you over the years and he says: Fine, I believe you, here is your money.

The same with a foreign transaction. But the banks do not quite know all this foreign business, and they are kind of a little leery of it if the bank has not had a lot of experience in it. And so he needs some credibility factor.

Maybe that credibility factor can be provided by the Department of Commerce or Eximbank or something like that, as a clearing-house to get the bank participating in it.

But the bank wants to make money. I do not think the bank's interest is other than a profit motive. I do not think they are interested in providing intelligence or anything like that. They are out there to make the money.

Chairman NEAL. If they can do it and make the money, that is a good business opportunity. And I would think—by the way, let me say, I have to keep saying, I am very concerned that I may leave the impression that I somehow want to weaken this. I do not. I want us to be just as competitive as we can possibly be in world trade. I think it is critically important.

I think part of that importance is the psychological impact. I think we need to send signals to our trading partners that, by golly, we are going to regain the lead in this area.

But Mr. Levy, maybe you could comment on the question that I raised?

Mr. LEVY. I think Mr. Hester has credibility, because he does know the international market. His trading company is experienced.

The point is, the small company or the medium-sized company in the Midwest needs to go to a Mr. Hester or to another trading company. The banks have the resources to offer the video services. Banks would be able to provide to provide the full range of export services.

Chairman NEAL. But do they have to have an equity position to do that, or is it even desirable?

Mr. LEVY. I think it is desirable and I think it gives them an incentive. I think if they have put together a package in a company in which they have an equity position, they will provide the capital that Mr. Hester has pointed out is needed to set up a worldwide network.

Mr. HESTER. I am just thinking here—

Chairman NEAL. Just 1 second.

Mr. LEVY. They have offices abroad already. They have the retail banking relationships in the United States. And they have banking relationships abroad with companies that could be potential purchasers of American products.

Chairman NEAL. Right.

Mr. LEVY. That is a good start.

Chairman NEAL. Right.

Mr. LEVY. I think they have the adequate capital to make the investment, to bring whatever talent is necessary and whatever resources are necessary to build a worldwide network. I think they should be given a chance to try. I do not think anyone can sit here today and say they are going to be the panacea for U.S. exports. But I think it is one way of trying to expand U.S. exports.

Chairman NEAL. I have no argument with anything that you have said. The only question is, are you saying that they will not do that, that they will turn their back on this wonderful money-making opportunity, if they are not allowed equity positions?

Mr. LEVY. The first step is they will need exemptions from existing banking laws to permit them to operate.

Chairman NEAL. I agree, and we can find ways to grant those.

Mr. LEVY. I think the easiest way and the way that provides the most incentive is to give them limited equity participation in the trading company.

Mr. HESTER. To answer your question, Mr. Chairman, I think they would still participate whether they had an equity position or not.

Chairman NEAL. That is really my question. Mr. Levy, are you saying that they would not, that they would turn their back on these opportunities?

Mr. LEVY. I do not know. I can't answer that. I can't speak for the banks in the sense of whether they will or they won't. I think they will if they see a potential profit center. If they could legally sell the services. They would in effect have established their own trading company within the bank.

Banks would have to devote resources, whether it is \$1 million or \$2 million, to bring people into the bank who would be able to provide the exporting services. I think there is no difference in the sense of a bank either contracting to provide the services or having an equity position in the export trading company providing those services.

There is no difference whether it is XYZ trading company in which a bank has invested \$2 million, or the same bank which has devoted \$2 million of its capital to build within the banking structure a service organization.

Maybe I am oversimplifying it, but I don't see the difference. The bank is going to have to take capital and devote that capital to establishing an entity in which there will be the capability to provide services. Whether that is done by the bank or by a trading company with bank participation, I do not see the distinction in terms of equity participation. In both instances the bank has taken capital and invested it toward a particular goal.

Chairman NEAL. I think that is correct.

About 80 percent of our exports, as I understand it, are done by the larger companies, under 100 companies. And I have no populist notions about reducing their strength. I think they ought to be encouraged, if anything strengthened.

Would the export trading company idea be especially helpful to those larger companies?

Mr. LEVY. Our organization represents many of those large companies. I do not know whether they would form trading companies or whether they would make use of trading companies.

Mr. Hester pointed out at one point that ITT has used his trading company. Conceivably, these big companies will use the services of trading companies. I do not know.

But it is clear, I think, that the big U.S. exporters want more U.S. companies exporting. They want a larger U.S. economic presence in the world. And I think that is one major reason they would like to see this bill passed.

Chairman NEAL. Have the bigger companies experienced difficulty in attracting adequate capital for the purposes of export?

Mr. LEVY. Yes, I think in a number of cases they have had serious difficulties in getting adequate capital from the Export-Import Bank, which has limited resources.

Chairman NEAL. I am not talking about the public sector. I am talking about the private sector.

Mr. LEVY. I do not know whether or not they have experienced difficulties to the extent that they have been debilitated.

It is clear that in terms of financing where they have gone to Eximbank, which is one source of financing, they have experienced difficulty getting adequate financing.

Chairman NEAL. It would seem to me that one of the main benefits of this legislation, the antitrust exemption, which I see as the heart of the bill, would allow some of the bigger companies to get together to bid on some of the major projects around the world, maybe a whole oil development from beginning to end, and that this would be one of the major benefits to our trading posture.

We compete against the Japanese, the French, and the Germans and so on. Wouldn't that be a major benefit to the larger companies?

Mr. LEVY. It would be of enormous benefit. Our foreign competitors have been able to put together consortiums where they can bid on everything from providing door handles to the sophisticated plant equipment. Title II of S. 2718 would provide the opportunity for American companies to join together and bid as a consortium without fear that they are violating domestic antitrust laws.

Chairman NEAL. I would love to be so convinced that bank participation is necessary that I could go before the Financial Institutions Subcommittee and argue for it, but you have not given me enough ammunition yet. I wish you would think about it a little bit more and, at your convenience, give me some good arguments why this particular aspect of the bill is so essential. I would very much welcome that.

Mr. LAFALCE. Mr. Levy, on page 4 of your statement, you state: "Without clear authority to import into the United States, a U.S. export trading company could find itself at a distinct disadvantage in participating in barter transactions." What change do we have to make in what law to permit this?

Mr. LEVY. I think that the Senate report points out the principal purpose of the export trading company is exports and, as such, has to derive, I think the report says, 50 percent of its income from exports. The converse of that is they could do a certain percentage of importing. I would like to see that pointed out in perhaps the purposes section of the law, the reason being—

Mr. LAFALCE. Wait a minute now. Asking that they do at least 50 percent of their business in exports is not an unreasonable requirement. That permits you to do 50 percent in imports. In other words, you have raised a problem. I am not sure existing law presents that problem or what law we would have to change.

Mr. LEVY. I am not sure that there has to be a change in terms of authorizing an export trading company to be able to import. I think it is left somewhat vague in the law.

Mr. LAFALCE. I find the statement and the answer somewhat vague. I would ask you to send me a letter clarifying that point.

Mr. LEVY. All right.

[In response to the information requested by Congressman LaFalce, the following letter was received from Mr. Levy for inclusion in the record:]

Emergency Committee for American Trade

July 2, 1980

The Honorable John J. LaFalce
225 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman LaFalce:

This letter is in response to your request for an explanation of the statement on page 4 of my testimony concerning the need to clarify the extent to which an export trading company has the authority to engage in third country trade and the importation of goods and services into the United States.

An increasing number of transactions in world trade do not involve the exchange of cash for products. These transactions, instead, involve payment for products in other types of goods or raw materials of equal value. As a result, a company would find itself in the position of taking title to goods which would need to be sold for cash in order for the company to recoup its monetary investment. There are essentially two types of transactions available to a company in such a situation. The company could either find a buyer in the United States for the goods or raw materials, or find a buyer in a third country.

As presently drafted, all the pending export trading company bills (S. 2817, H.R. 7230, H.R. 7310, H.R. 7364, H.R. 7436, H.R. 7463) define an "export trading company" to mean "a company which does business under the laws of the United States or any state which is organized and operated principally for the purpose of (A) exporting goods or services produced in the United States; and (B) facilitating the exportation of goods and services produced in the United States for unaffiliated persons by providing one or more export trade services." An argument could be made that this definition is not broad enough to permit an "export trading company" to import the goods or raw materials received in a barter trade situation, or to dispose of those goods via third country trade. Such a narrow interpretation could unduly restrict the volume of export trading company business.

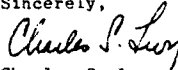
Therefore, if the House Committee on Banking, Finance and Urban Affairs reports out an export trading company bill,

the Committee should include in its report a clarifying statement similar to that included by the Senate Committee on Banking, Housing and Urban Affairs in its report on S. 2718. The Senate report states:

"Section 103(5) defines an export trading company as one engaged 'principally' in export trade, both on its own behalf and on behalf of unaffiliated persons. Thus, the presumption is established that on the average at least one-half the company's total business — which may include some domestic trade, some import trade and some 'third-party' international trade wholly outside U. S. commerce — will be directly related to U. S. exports which must contain at least 50 percent value attributable to the U.S." [emphasis added] (S. Rept. No. 96-735 at 6)

I hope that these comments are responsive to your question. If you have any further questions concerning this issue or any other issue relating to export trading companies, I will be pleased to respond.

Sincerely,



Charles S. Levy
Vice President

Mr. COOPER. Mr. Chairman, we have discussed so many of the resources that this Nation has for exporting through the whole gamut of marketing—Commerce Department. Financing is only a part of the whole package. I think you have to recognize we have these resources. They are our tools in the war for trade balances, and we are losing. And then it follows I would endorse your efforts to find a new tool. I would agree there are certain risks in protecting the traditional banking function. But isn't it worth the risk if we can limit it, control it?

Chairman NEAL. I would say it is worth the risk if there is some need. I am just asking you to clearly demonstrate the need.

Mr. COOPER. I am not sure that this is a panacea. It does sound like a step in the right direction. I can visualize in my own town maybe 20 companies making equity investments in a trading company, maybe 3 or 4 of the major banks making equity investments, then having that trading company hire, maybe from some of our companies, the competence in marketing, market research, the whole gamut—and it is currency, financing, shipping, insurance, materials handling, storage, warehousing—and do that for the whole community on a fee basis with proper pricing, so that at the end of each year it has made a profit.

Chairman NEAL. Why couldn't a company like Mr. Hester's do that?

Mr. COOPER. A company like Mr. Hester's serves a very useful function. It does now. What we need is something bigger than that. I can visualize an entire community getting behind—the city of Buffalo having a trading company. The cities of Boston, Cleveland, and Cincinnati. But having the competence on site—you see, one thing, there are ways of getting these things done, but they have to be done competitively. We have to still have the cost of doing that business competitive with our foreign competitors. And I could not agree more: We do not want any subsidies. I don't see any subsidy in this. This is free people in a new framework, conducting business. It did appear to me to have some advantages, and it they are largely in the antitrust area.

Chairman NEAL. We are in complete agreement on that. As I say, I would like to be in agreement with you on this other, but I do need some better reasons than I have heard so far, to argue strongly for it. I think Mr. LaFalce's analogy with the Small Business Investment Corp. is a very good one. We are talking about a limited risk. We do not want to risk the stability of the domestic banking system in this; that is a very important interest we all share.

Well, I am certainly not antagonistic to the idea. I would welcome any future comments you have. I want to thank all of our witnesses for appearing this morning.

Do you have any other comments?

Mr. LAFALCE. No, I have no further questions of the witnesses at this time.

I do want to say, though, that I am chairman of a small business subcommittee, the Small Business General Oversight Subcommittee. And because I believe export trading companies can have such a significant beneficial impact upon the small business community of America, I am going to be having hearings focusing in on that

aspect, the ability of the small businesses and the desire of the small businesses to access the international market. And I am going to explore the possibility of amending the Small Business Investment Company Act to perhaps include investments by financial institutions, not only in SBIC's who operate domestically as domestic companies, but also in the export market.

Chairman NEAL. Thank you.

I thank the witnesses again, and let us hear from you whenever you have any other ideas on this that will help us in our deliberations. Thank you.

[Whereupon, at 11:55 a.m., the hearing was adjourned, to reconvene at 10 a.m., on Wednesday, July 2, 1980.]

EXPORT TRADING COMPANIES LEGISLATION

WEDNESDAY, JULY 2, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON INTERNATIONAL TRADE, INVESTMENT AND MONETARY POLICY,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,

Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Stephen L. Neal (chairman of the subcommittee) presiding.

Members present: Representatives Neal, Evans, LaFalce, Leach, Hansen, and Porter.

Chairman. NEAL. The subcommittee will come to order. This is the second day of hearings on legislation to facilitate the growth of exporting trading companies. Yesterday, we heard testimony from private witnesses who generally support the objectives of this legislation. There was not, however, complete harmony of views on the most controversial question, that is, whether banks should be permitted to own equity in export trading companies.

It may be that bank participation is essential for the success of export trading companies, but the witnesses yesterday did not provide arguments in favor of bank participation so compelling, so overwhelming that they must command our immediate assent. One witness, Mr. Hester, who already runs a successful exporting trading company, implied the availability of financing for exports is not a major impediment to export growth and doubted that bank participation in the ownership of export trading companies would provide a major boost to exports.

Another witness, Mr. Levy, suggests that the forms in which banks allocate a portion of their resources to the export business may not be so important, provided we enable them, through appropriate changes in existing law, to develop an extensive range of the various services, beyond the simple financing, that small and medium businesses need in order to export successfully. More questioning, more consideration of this issue is required. Stronger rationale for bank participation should be developed.

The heart of this legislation seems to me to be the provisions that would render export less vulnerable to antitrust litigation. While those provisions of the bill before us lie primarily within the jurisdiction of other committees, we have a keen interest in understanding how they would operate.

Our witness from the Commerce Department should be able to clarify the antitrust exemption procedures envisaged by this legislation.

I am pleased to welcome our witness today, our colleague from Arkansas, Hon. Bill Alexander, who will be with us in a few minutes. He was scheduled to go first, but because of a change in the schedule, he cannot be with us at this time. I am told he is on his way over.

We had invited U.S. Trade Representative Reubin Askew, and he had accepted but later found he was unable to attend, so we will hear from Robert Cassidy, General Counsel for the U.S. Trade Representative, and Abraham Katz, Assistant Secretary for International Economic Policy in the Department of Commerce.

I would like to hold just for a minute to see if Congressman Alexander won't be here, so that he can go first. We are in session this morning, and this may be a confusing day. We may have to leave and come back, and so on.

While we are waiting for Mr. Alexander, let me just say that I see our job, among other things, in this subcommittee, is to promote exports, and we understand clearly the importance of this subject. We want to do what we reasonably can to increase our export posture, and I raise the question of bank involvement, not because I am convinced that banks should not be involved, but this has become the most controversial part of this legislation, and, as I said yesterday, I would love to be able to go before the Financial Institutions Subcommittee, who has jurisdiction over that part of the bill, and argue strongly in favor of it; but so far we simply have not received the good arguments that we need for that purpose.

It is not clear that banks could not offer these services for a fee just as they offer many other services without owning shares in export trading companies.

Our colleague, John LaFalce, yesterday pointed out the example of bank participation in small business investment corporations whereby a limited amount of a bank's assets are made available through a subsidiary for equity participation in domestic companies. That seems to have filled a very good need, and it might be a very good model for us to follow here. But the banking system plays such a critically important role in our economy, and has such a critically important responsibility for the funds of the private citizens of our country—widows, orphans, pension funds, and so on—that we certainly don't want to see those funds placed in any unreasonable risk.

I would like to yield to the ranking minority member, Mr. Leach, for any comment you might have.

Mr. LEACH. I don't have any comment, Mr. Chairman.

Chairman NEAL. If it pleases the witnesses, we might engage in a little informal colloquy until Congressman Alexander arrives. I don't know whether any of you will be dealing with this question of bank participation in any detail this morning or not. Will you, Mr. Katz?

Mr. KATZ. Yes, sir.

Chairman NEAL. If there are any comments.

Mr. CASSIDY. Mr. Chairman, I think Mr. Katz and I both intend to address that, and, in addition, we have Mary Chaves, from Treasury, who can also go into the issue.

Chairman NEAL. Very good.

Well, I am sorry for the little delay, but we promised Congressman Alexander we would wait for him.

Mr. KATZ. Mr. Chairman, rather than start on a part of the prepared statement, I think I should take up your offer and go right to the heart of the question that is bothering you—why equity participation? This is the question that you have asked, and I think it deserves a very straightforward answer.

I think we take it for granted why the banks are necessary in this operation. The banks are necessary because their international offices have experience in trade finance; they are familiar with the U.S. producers most likely to source the exports; they know what the foreign markets are; and they have all the skills of organization and management, so they could put the whole thing together.

The question is, Why shouldn't they do this for a fee? I think the answer is basically simple: We need an entrepreneur in this exercise, and we need to get the banks involved with a strong incentive to promote U.S. exports and to help assure the success of the export trading companies.

In my statement I will say that we really look to two entities in this export trading company concept. One, the strong manufacturing exporter that is in the business already, and that could expand business by taking other companies along with it. But the other, perhaps the most important, source of strength would be the banks.

This is the untapped strength of this country in exporting and, I think, the major innovation in the design of this concept. We are as concerned as you, Mr. Chairman, about the deposits of the widows and orphans, and your deposits and my deposits in the banks. There are a number of provisions in this legislation which were carefully worked out with the Treasury, with the Fed, with experts that we are convinced assure the depositors that the banks are not putting their money at risk, and there are about three or four provisions, and we go into them in the testimony.

So basically, Mr. Chairman, to sum up, in the most informal way, we need the banks because of their knowledge, their skills, their organizational capability, their capital strength, their knowledge of foreign markets, and we need them in a way which would give them incentive to lead to organize, to put the packages together.

Without the banks' equity participation, this concept would probably be a hollow shell.

Chairman NEAL. Well, that is interesting. Why are you so sure that banks won't want to generate this business for a fee? They certainly are happy to do that domestically.

Let me stop you, if I may, and we will get into this in more depth in a moment.

I am sorry for the interruption, but I am pleased to welcome at this time our distinguished colleague, Congressman Bill Alexander from Arkansas, who is chairman of the Export Task Force of the House of Representatives, and a real leader in this effort to improve our export posture.

STATEMENT OF HON. BILL ALEXANDER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ALEXANDER. Thank you, Mr. Chairman, members of the subcommittee. I appreciate the opportunity to appear before you this morning and to support the export trading companies bill which is being considered by the subcommittee. I have not completed my prepared remarks, but would like to testify off-the-cuff, after which I would like permission from the committee to submit a formal statement which may be included as a part of the record.

Chairman NEAL. Without objection.

Mr. ALEXANDER. Mr. Chairman, it has been my experience, together with those who have strived to assist in expanding exports in this country, that most Americans are at a competitive disadvantage when attempting to butt heads or compete with our foreign counterparts in international trade.

There are a number of barriers which we characterize as disincentives, ranging all the way from extra-territorial application of our laws and regulations, Foreign Corrupt Practices Act, and the lack of integrated trading systems, to the financial, physical and marketing inadequacies of a nation which has, in the past, turned inward in order to supply the markets for our products.

More recently, in the last decade, we have seen the need of turning outward to sell our products in international trade. That need is well established and does not require additional elaboration.

One of the techniques I think can assist in expanding trade into the international market is the enactment of the Export Trading Company Act of 1980, now pending before this subcommittee. I support that act.

I would add, however, that I believe that the act responds primarily to the needs of high density urban metropolitan areas, or metropolitan centers. I come from a region of the Nation that lacks a high density urban center, unless we would look to St. Louis, possibly Memphis, New Orleans, Dallas, maybe to some extent Little Rock, to supply the services that could be offered by firms assisted by this act. I don't think that the act in its current form, adequately responds to the needs of most areas of such States as Arkansas, parts of North Carolina, Virginia, West Virginia, Pennsylvania, even parts of New York.

Incidentally, New York, as I recall, has the largest rural population of any State in the Nation. There are parts of our Nation which are not served by the large banking companies and which I do not believe will be accommodated by this legislation.

Therefore, I will submit some proposed bill changes by way of amendments which would expand the scope of the trading company legislation to include nonprofit, service organizations and institutions. Now, where there are large banking companies which can provide all these multitudes of services that are needed in order to accommodate the producers and manufacturers of the United States to provide their insurance needs, banking needs, contractual needs, foreign relations needs, and so on, the legislation is fine.

But in areas such as the area that I represent, which is an exporting area, there are no such banks. Therefore, we have organized a trade center known as the Mississippi Valley International

Trade Center, referred to as the Valley Trade Center, to serve the region that is not served in that area marked by points such as St. Louis, Memphis, and Little Rock. The Valley Trade Center is a nonprofit service organization and institution in association with the university. The board of directors serves free.

The purpose of the organization is to help the manufacturers and producers of the region. VTC is intended to sustain itself by charging a small fee for the services that are rendered. It is not in the business of making profit in the sense that it will provide or have remuneration for all the board members and officers, and so on.

I would hope that the committee would seriously consider this amendment, because I believe that it is necessary in order to extend the opportunity for trading, not only to the high density urban areas which are covered by this bill, but to the nonmetropolitan regions of the country which I think would be covered by amending the legislation to include nonprofit trade centers.

[Congressman Alexander's prepared statement follows:]

REMARKS BY
THE HONORABLE BILL ALEXANDER
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE, INVESTMENT AND MONETARY POLICY
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
WEDNESDAY, July 2, 1980

Mr. Chairman and members of the Subcommittee, I appreciate your giving me an opportunity to share with you my views with regard to the export trade company proposals you are now considering.

Because I know that you have a heavy schedule, I would like to summarize my written statement and ask that the full statement be made a part of the hearing record.

My comments are based on my experience as a member of the President's Export Council, as chairman of the House Export Task Force, as a member of two House Committee on Appropriations subcommittees dealing with Executive Branch departments, agencies and offices working in the international trade area and my efforts to help Arkansans wishing to become involved in export trade.

The work I have done persuades me that a number of barriers place most Americans at a competitive disadvantage when attempting to outsell foreign counterparts in international trade. These disincentives, range all the way from extra-territorial applications of our antitrust laws and regulations, the Foreign Corrupt Practice Act, and the lack of integrated trading systems, to the financial, physical and marketing inadequacies of a Nation which has, in the past, turned inward in order to supply markets for our products.

In the last decade awareness of the urgent need for the United States to involve itself and its businesses, industries, and farm

producers in a more vigorous, innovative and competitive pursuit and development of international markets for our products. A number of Congressional and Administrative initiatives are underway.

This Committee is to be commended for its action in undertaking the consideration of the export trading company question. Some form of the proposals before you would, I believe, be a major asset to our national export trade expansion effort. I am pleased to have an opportunity to support the concept embodied in these proposals.

After studying the proposals, though, I am concerned about one weakness which appears to be common to all of them. Like too much of the legislation we are called on to deal with, these proposals fail to adequately take into account the specific conditions existing in mid-sized cities, small towns and rural communities of the countryside.

These are the kinds of regions many of us represent. It is here that many products, agricultural, mining and manufactured are produced for ultimate sale into international markets. Our Congressional Districts either have no high density metropolitan area in them or only a very small part of the District is within a metropolitan area. For the most part, this means that these regions can not supply the financial, transportation, legal, insurance and other essential expertise needed by individuals or organizations involved or wishing to become involved in exporting.

There is a general consensus within and outside government that in order to maximize our national export potential we must involve hundreds, thousands more small and medium-sized businesses. •

More than 300,000 such groups exist in our Nation. They are the biggest generators of new jobs and as a whole provide employment to the majority of our Nation's workers. At the same time, no more than ten percent of these businesses are involved in export trade. The U.S. Department of Commerce has estimated that there are at least another 18,000 that could export profitably.

A serious difficulty in getting the owners and operators of these businesses involved in exporting is that if these small and medium-sized groups are located in mid-sized cities, small towns and rural communities of countryside areas. They not only don't have the capital to invest in exploring export market opportunities but they are most probably not located within easy reach of the technical, financial and marketing expertise necessary to exporting successfully.

The consensus that more small and medium-sized American businesses must be brought into exporting takes cognizance of the fact that those who have not yet exported profitably will, particularly in the current economic situation, be reluctant to risk capital on export ventures.

In countryside areas where resources are scarce it is usual for us to pool talents and information to achieve a common purpose. Frequently this pooling takes the form of a non-profit service organization.

My study of the export trade issues persuaded me that one solution to the difficulties facing small and medium-sized groups interested in

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international trade could be the formation of a non-profit service organization or institution that would provide the expertise needed to export successfully. The District I represent generates a sizeable number of products which are exported, as do other regions in the Mississippi River Valley.

But, the export expertise, when it is available, is centered in such metropolitan areas as St. Louis, New Orleans, and in some instances, Memphis and Little Rock. The need then, was to establish a non-profit export service organization to provide a resource pool of export expertise to be tapped by a variety of small and medium-sized businesses wanting to get directly into exporting or to maximize their benefits from export activity.

With that objective in mind we formed the Mississippi Valley International Trade Center, a private, non-profit corporation incorporated in Arkansas. Its services are intended to be available on a regional basis.

The people, businesses, industries, and Arkansas State University are focusing much of their export development and expansion effort through the Trade Center. Its board of directors contribute their time. MVITC is designed primarily to help industries, businesses and agricultural producers of the region with their export trade efforts either through provision of direct services or through programs and activities designed to improve the operation of government export trade programs, increase public awareness of the need, potential and nuts-and-bolts practice of selling in international markets.

It is intended that the Trade Center will become self-

supporting through charging a small fee for services that are rendered. The Trade Center is not in the business of making a profit in the sense that it will provide or have remuneration for all the board members or officers.

Thus, although this kind of organization is intended to perform all the services of an export trading company it is not a corporation in the usual profit-making sense. But, because it is intended to do many of the same kinds of tasks as an export trading company, I believe that it should be eligible for the benefits envisioned under the export trading company proposals you are examining.

Therefore, I want to urge that you and your colleagues consider some amendments which I offer.

The language has been drafted so that it might be inserted in either H.R. 7436 or H.R. 7463. Basically the amendments simply expand the provisions of these bills to specifically include non-profit export service organizations such as Mississippi Valley International Trade Center under the coverage of the export trading company legislation. One other addition would be made. Because of the non-profit nature of the organization its initial operations costs are difficult to raise. My amendment would allow federal grants to be made to such organizations.

The amendments which I propose basically involve modest language additions. For convenience I have included more language than strictly necessary for ease of understanding. The word additions I am proposing are underlined in this statement.

The amendments I offer are as follows:

(Applicable to either H.R. 7436 or H.R. 7463)

Sec. 103(a)

(5) the term "export trading company" means a company, operated for profit or as a non-profit service organization or corporation, which does business under the laws of the United States or any State and which is organized and operated principally for the purpose of - - -

(Applicable to H.R. 7436 or H.R. 7463)

Sec. 103(a)

(8) the term "company" means any corporation, partnership, association, or similar organization, whether operated for profit or as a non-profit organization or corporation.

(Applicable to H.R. 7436)

Sec. 105(a)

(13) the term "export trading company" has the same meaning as in section 103(a)(5) of this Act, or means any company or organization, operated for profit or as a non-profit service organization or corporation, and operating principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this act.

(Applicable to H.R. 7436, Sec. 106(a) or H.R. 7463, Sec. 105)

The Economic Development Administration and the Small Business Administration, or their successors, are directed in their consideration of applications by export trading companies for loans, guarantees, and, in the instances of non-profit corporations or organizations, operating grants, including applications to make new investments related to the export of goods or services produced in the United States and to meet operating expenses, to give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small or medium-sized businesses or agricultural concerns in the export market.

(Applicable to H.R. 7436 and H.R. 7463)

Sec. 203

"Section 1. DEFINITIONS.

"(5) ASSOCIATION - The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations, operated for profit or as non-profit organizations or corporations, which are created under and exist pursuant to the laws of any State or of the United States.

(Applicable to H.R. 7436 or H.R. 7463)

Sec. 206.

"Section 4. CERTIFICATION

"(a) PROCEDURE FOR APPLICATION. -- Any association, company, or export trading company, as defined in section 1(5) of this Act or in section 103(a)(5) of the Export Trading Company Act of 1980, seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

This concludes the amendments I believe would be necessary to insure that non-profit organization or corporations, organized to provide export trade services like those envisioned for profit-making export trade companies under the proposals before you, are eligible for the benefits of the export trade company legislation you are considering.

Thank you again for giving me the opportunity to bring these matters to your attention.

Chairman NEAL. I thank our colleague for that idea. We had one version of the legislation where there was a provision that would have allowed States and other governmental bodies to act as export trading companies, and those provisions were taken out because of a concern that the State might be in competition with private enterprise. You are suggesting that private enterprise endeavor, as I understand it, but a nonprofit one.

Mr. ALEXANDER. And that is because there is not a banking company of large enough size in the region to accommodate the scope that is embraced under this legislation. You know how it is in some communities: We have to pool our resources. You take the university community, the banking community, the business community in general, the farming community, and so on, and we pool the talent that is encompassed within all of those communities and pick the best from each to represent those areas, put them on a board which is not profit in nature, but in a sense serves the profitmaking purpose of all these other organizations, to fill a need that is not otherwise filled.

Chairman NEAL. It is certainly an interesting idea, and I certainly appreciate your bringing it to us. It seems to me it is very much in keeping with the idea we are trying to generate here, which is to promote exports and to provide an environment whereby smaller companies, and companies from all over the country, might become involved in export activities.

Mr. ALEXANDER. Let me say one other thing. It is possible that all of the banks of a region could form together in a parent company or a holding company and form a trade center which would then accommodate all of the needs of the various banks; so this is an extension of the concept to embrace a wider group of people.

Chairman NEAL. Mr. Leach?

Mr. LEACH. I have no comments, but I think your statement is excellent. I might just add it is good these ideas are coming from the southern part of the Mississippi, down by Arkansas your ap-

proach is appropriate for Iowa as well. The Mississippi Valley is shared proudly by our State.

Mr. ALEXANDER. We would be glad to share that valley with you.

Mr. LEACH. Thank you.

Chairman NEAL. Mr. LaFalce?

Mr. LaFALCE. No questions, Mr. Chairman.

Chairman NEAL. Well, we have the second bells.

Mr. ALEXANDER. If you want me to come back, I will be glad to return.

Chairman NEAL. We are running a little short of time. I want you to have all the time that you want. I would like to be able to talk with you a little later about this if that would be all right. And I certainly want to thank you again for coming.

Mr. ALEXANDER. I will be pleased to respond to the wishes of the Chair.

Chairman NEAL. We will call on your expertise and influence when we get this legislation to the floor.

The subcommittee will recess for about 10 minutes for us to answer a roll call vote.

[Brief recess for members to vote.]

Chairman NEAL. The subcommittee will resume hearings on the export trading companies at this time.

Gentlemen, we had two votes. Maybe we will have a little while to concentrate on your important testimony. I would like to ask you to please summarize your testimony in as brief a period as you could. It would be very helpful if you could summarize in 5 minutes, or maybe at the most 10 minutes, so that we can get into some questions and answers, and, without objection, we will put your entire testimony in the record, and please do summarize as much as you can. We have been asked to hear from Mr. Cassidy first, and then our other witnesses.

Mr. Cassidy, please proceed.

STATEMENT OF ROBERT CASSIDY, GENERAL COUNSEL FOR THE U.S. TRADE REPRESENTATIVE

Mr. CASSIDY. Thank you, Mr. Chairman.

First of all, I apologize on behalf of Governor Askew. He was called to a meeting with the President, and he tells me he wishes he could be here.

I will summarize briefly what our statement says. We are persuaded in the administration that one constructive means of facilitating increased exports of goods and services by American producers is through the development and use of export trading companies.

The administration strongly supports the principle and purpose of export trading company legislation, and we endorse the concept of export trading companies and changes in the act to clarify application of the antitrust laws to export trade activities.

In our view, the enactment of this piece of legislation may well be the best hope we have this year of sending a positive signal to the private enterprise that we are indeed serious about promoting American exports, and we would like to commend the work done by yourself and Mr. LaFalce and Mr. AuCoin in the introduction of the bill on export trading companies you have put in.

I think rather than go through the justification for this kind of legislation, which I believe Mr. Katz can get into, I might go immediately to the question of the banks' changes that are proposed in both the Stevenson-Danforth bill, S. 2718, and in the Reuss bill, H.R. 7436.

In evaluating the performance of foreign trading companies in Japan, Korea, and in the European countries, we have found that while no particular foreign model would be suitable for the United States, there are, however, a number of elements that each of these foreign models has in common, and we believe these elements would be very useful in the United States for increasing the incentive for American companies, particularly small and medium-sized companies, to enter into export trade.

If I could summarize briefly, some of these common elements are: First, the foreign trading companies in other countries have extensive networks, both domestically and internationally, so they are aware of market conditions overseas and the availability of products in their own countries.

Second, they are exceedingly familiar with the business practice of exporting, which is exceedingly complicated, and particularly in the case of the United States, where people are used to a continental market without having to go through various custom barriers and other forms of international barriers to trade. This kind of familiarity we believe is probably essential to bringing American companies, which now do not export, into the exporting business.

In essence, what these companies provide through their contacts and their familiarity with the international system is a deal-making point, a place where people who are familiar with international business and familiar with both domestic producers and foreign markets can put together an export sale, and, therefore, expedite and facilitate exports.

Finally, and perhaps most importantly at this point, all of these export trading companies which are now operating overseas are characterized by large financing capability. This is important for two reasons. One is that many of the major foreign projects which American companies are particularly interested in are essentially one-shot deals, huge construction projects, for example, where, for a limited period of years, a number of companies providing a large amount of capital as well as expertise and products must come together to create a package which they can then bid against foreign companies for the project.

Second, this kind of financial capability is essential to the development of new markets. One of the most common phenomena we see in the case of American business is most smaller and medium-sized American companies cannot sustain for a period of years the kind of concentrated effort which is essential to penetrate a new foreign market. One of the principal reasons they cannot sustain this kind of activity is they have inadequate financing resources.

Furthermore, the foreign trading companies, in essence, provide a full service to people who are interested in exporting. It includes marketing knowledge, domestic manufacturing knowledge, knowledge about the legal aspects of international commerce and financing capability. It provides one place where a person who thinks he may be interested in exporting can come and get the kind of help

he would need to consummate a deal relatively quickly. It also provides a very flexible system whereby either a group of companies can come together to form a trading company to carry on a sustained campaign to develop a new market, or a group of companies can take advantage of existing trading companies to develop a new market. Whatever the commercial reality of the situation may be, the system is sufficiently flexible to allow an arrangement that is most suited to winning the contract.

In the case of the question which you raised earlier, Mr. Chairman, about the relative merits of taking the approach which is demonstrated, for example, in H.R. 7436 or in the Stevenson-Danforth bill, as opposed to permitting banks to provide certain kinds of commercial services to trading companies for a fee, which would be more similar to the traditional banking practice, although certainly not traditional banking practice, I would like to make a couple of observations.

First of all, as you know, we would necessarily have to change a number of our current statutes, such as the McFadden Act and Glass-Steagall Act, to permit banks to get into certain kinds of commercial activity they are now forbidden to get into.

That, to me, seems to raise the same kind of philosophical problem I think is concerning you, and I think it is a legitimate one, about the approach taken in the Stevenson-Danforth and Reuss bills, because in both instances whether we use the approach of the Reuss bill or take an approach such as you have suggested, we move banks into commercial activities, and the question then is, are the results of the two approaches the same, or are there some differences, and if there are differences, what are the relative merits of the two approaches.

Insofar as we can make out, the approach you suggest, although it would have to be fleshed out in considerable more detail, probably would not have two essential elements to it. One is this access to capital, which I referred to earlier—financing. The requirements of financing in international trade are usually enormous, and our experience to date at least has been that our traditional banking system, although it can on occasion come together quickly to form the required financing for a major project, apparently, for whatever reason, has not been all that successful in providing export financing, particularly for the small and medium-sized companies.

There must be some reason for this. We don't know what it is. I suspect it may be a combination of things, including the absence of what I call the dealmaker, a man familiar with all aspects of the international transaction and who can go out and tell a domestic manufacturer that he is missing a specific market opportunity overseas. It seems to us while banks are certainly not the only people who could provide that kind of deal-making function, they are at this time peculiarly well situated, because of their knowledge about both foreign operations and the domestic market.

Second, the difference in the liability of banks if they were to provide commercial service by fee, or if they were actually to take an equity position in a foreign trading company, is somewhat different. If they were to take an equity position, their risk exposure would be limited liability, whatever their share of the corporate stock was. As it stands today, if they were allowed to, of course, if

we were to change the law, then they would be liable for unlimited liability for whatever the mistake may have been that could have been attributable to fault with them in whatever commercial service they provided.

So it seems to us in terms of incentives to a bank to form the deal-making function and draw on the resources which they have available today, that the approach taken under H.R. 7436 is probably preferable to the idea of changing the various restrictions which now exist on the commercial activities of banks.

You asked also about the antitrust provisions. On that point it is the administration's view that the provisions of the various bills which contain the agreement that we worked out over a period of time between the Antitrust Division and the people in the Senate particularly is an excellent compromise which will improve considerably the existing Webb-Pomerene antitrust position.

To speak in general terms, in our opinion it will provide certainty which is essential to any business transaction in exchange for what we believe is probably a more procompetitive legal structure than the current Webb-Pomerene Act, which is so vague and fuzzy in its application that it is difficult to police either for the Government, and it is difficult for the business community to know when they are protected and not protected against antitrust liability.

Let me add one more thing. There is one problem I would like to note, and that is that the tax provisions which I believe are in title 37, both H.R. 7436 and S. 2718 at this time, the administration is opposed to those provisions. It is obvious that the tax policy is in a state of great flux, but it is our view that the DISC and subchapter S questions raised by both of those bills, by all of these bills, should be explored in the context of an omnibus tax legislation which is, we assume, coming forward in the not too distant future.

Chairman NEAL. Thank you, Mr. Cassidy. We will hold our questions until we hear from Abraham Katz, Assistant Secretary for International Economic Policy, Department of Commerce.

Mr. Katz, we would also ask you to summarize, if you would please.

STATEMENT OF HON. ABRAHAM KATZ, ASSISTANT SECRETARY FOR INTERNATIONAL ECONOMIC POLICY, DEPARTMENT OF COMMERCE, ACCOMPANIED BY MARY E. CHAVES, DEPUTY TO THE DIRECTOR, OFFICE OF INTERNATIONAL TRADE, TREASURY DEPARTMENT, AND VINCENT TRAVAGLINI, ACTING DEPUTY ASSISTANT SECRETARY FOR FINANCE, INVESTMENT AND SERVICES, DEPARTMENT OF COMMERCE

Mr. KATZ. Mr. Chairman, I will summarize my summary, since Mr. Cassidy did such an excellent job in hitting the high spots, and getting right into the heart of the question I think that interests you.

Let me just supplement what he said with a few points. My prepared statement goes into some of the startling statistics which demonstrate the loss of market share in the United States and the fact that the exports of goods in our economy account for the lowest percentage of gross national product of any industrialized nation. But there is one set of figures that I think I would like to cite in my summary, because it goes to the heart of what we are

talking about. There are between 250,000 to 300,000 manufacturing firms in the United States, Mr. Chairman, of which roughly 25,000 to 30,000 export. Ninety-five percent of the manufacturing firms are small and medium-sized; that is, they have fewer than 1,000 employees. But relatively few of them actually do any exporting. Collectively these companies provide, at most, 10 to 15 percent of our export total.

It is significant that a very small number of U.S. firms account for a relatively large proportion of U.S. export. Only about 100 firms, Mr. Chairman, export half of the total U.S. exports of manufacturers. So really the purpose of this bill is to find ways and means of getting the smaller and medium-sized firms into this business. In searching for the appropriate techniques, we have looked, as Mr. Cassidy pointed out, at what our successful trading partners have done. Obviously we cannot and do not want to simply take over their form of export trading companies. It would be inappropriate from our point of view.

But, as a result of this analysis, we have come up with a structure for what a successful export trading company in the U.S. scheme of things should do, and we see three basic characteristics.

First, they must provide a one-stop facility for firms of any size interested in exporting. It must provide market analysis, distribution services, documentation, transportation arrangements, financing, and, after sales, services abroad.

Second, a successful export trading company will seek out U.S. products for which it has discovered markets overseas. It will not stand by passively awaiting overtures from U.S. companies interested in exporting their products.

I guess this goes under the heading of what Mr. Cassidy called the dealmaking role.

Third, the export trading company should limit the capital outlay and risk that any individual company would have to assume to begin exporting. The exporting company must be sufficiently capitalized to allow operations on a scale that will achieve the economies that are necessary to engage successfully in export trade.

Export trading companies with these characteristics are most likely to be formed by entities that already operate in international markets and that have sufficient capital available. A manufacturer that exports its own product may use its overseas networks to sell products of smaller U.S. companies that will not export on their own.

But, and this is the important thing, the other untapped possibility is that many banks have national and foreign coverage by branches, agents, or correspondent banks. These banks are already in the business of evaluating risks, researching foreign markets, and providing financing. Banks also have existing relationships with many domestic manufacturing companies. They are the logical candidates to form and participate in export trading companies.

No matter what the origins of ownership of the export trading company, its aim will remain the same: To export products of U.S. companies that do not now export in significant quantities.

We need legislation, Mr. Chairman, because if export trading companies have this potential, it is quite clear that the reasons

they have not exported lie largely in the inhibiting effect of some of our regulatory mechanisms.

With the exception of bank holding companies which can purchase up to 5 percent of the shares of any U.S. company, our banking laws and regulations do not allow banking investment in export trading companies. On the other hand, as you know, foreign banks are either sponsors of or closely identified with many of the successful export trading companies in other countries. There is also uncertainty in some segments of the business community over application of the antitrust laws to export activities associated with their domestic competitors.

Mr. Chairman, let me simply address the question of bank equity participation, which is really uppermost on your mind.

Because of their expertise in financial resources, banks can play an important role in the successful development of export trading companies. The administration believes that the banking provisions of H.R. 7436 adequately meet the concerns of safety and soundness of our financial system while permitting a leading role for bank participation in export trading companies.

H.R. 7436 permits a banking organization to make aggregate investments of up to 5 percent of its capital and surplus in export trading companies. Regulatory approval would be required for aggregate investment of more than \$10 million, investment that causes the export trading company to become a subsidiary of the investing bank organization or investments that would cause more than half of the voting stock of any export company to be owned or controlled by banking organizations.

Aggregate bank investments and credit extensions to export trading companies would be limited to 10 percent of a banking organization's capital and surplus. The provisions address specific regulatory concerns over parent bank exposures to trading company operations, potential commodity speculation and the need to avoid preferential credit relations.

Export trading companies with noncontrolling bank investments could take title to goods and hold inventory with the exception of positions taken in commodities other than as may be necessary in the course of normal trading relations.

Mr. Chairman, we believe that these provisions give adequate assurances to all depositors and at the same time get the banks in the organizing, dealmaking role that Mr. Cassidy so clearly discussed, and would enable this new entity to get started in a variety of ways.

I would just like to make one more comment. I do not think that we are talking essentially of large metropolitan areas. Certainly the banks in the large metropolitan areas have this capability that we are talking about, but there are other areas. We have become aware of a good deal of interest, for example, in the textile field in the South, where medium-sized banks are interested in this, and where the textile firms are interested in this kind of entity and are waiting with considerable anticipation for successful passage of this legislation.

Thank you, Mr. Chairman.

[Mr. Katz' prepared statement follows:]

Statement of Abraham Katz
Assistant Secretary of Commerce
for
International Economic Policy
before the
Subcommittee on International Trade, Investment and Monetary Policy
Committee on Banking, Finance and Urban Affairs
of the
U.S. House of Representatives

July 2, 1980

I am pleased to appear this morning before the Subcommittee on International Trade, Investment and Monetary Policy to present the Administration's views on legislation to authorize the formation and operation of export trading companies. H.R. 7436 and H.R. 7463, which are before the subcommittee, seek to encourage exports of goods and services by American industries by promoting the formation of export trading companies.

The Administration strongly supports the principle and purpose of these bills. The Administration endorses the concept of export trading companies and changes in the Webb-Pomerene Act to clarify the application of the antitrust laws to export trade activities. An increase in exports is of utmost importance to the nation's economic well-being, and this legislation will provide an effective incentive for increasing our exports. This legislative session already grows short. If we are to have this vehicle for facilitating our exports, we must act quickly.

The Role of Exports in a Strong U.S. Economy

In 1960 the United States had an 18 percent share of world exports of manufactures. By 1970 this share had dropped to 14.5 percent. During the 1970's this share dropped further before edging upwards again towards the end of the decade. However one interprets the United States' overall trade record, we can and must do better.

Improving the export performance of the United States remains a major objective of Administration policy. Exports are essential to the strength of the U.S. economy, and contribute significantly to U.S. jobs, production and economic growth. Exports enable important economies of scale, thereby contributing to the most efficient use of U.S. resources and to lower prices. Exports provide the most constructive way of paying for U.S. imports of petroleum and other essential commodities, and thus keep the dollar firm.

Enormous as our oil bill is, we could be paying for imported oil without running a balance of trade deficit if we had maintained the share of world exports in manufactured goods that we enjoyed in 1960. The post-war growth of Japan and our European allies, welcome as it has been, has given the United States stiff competition. So too, the newly industrializing countries have become important exporters of some manufactured goods. Yet the strengths of other countries do not tell the whole story. Another factor is the

traditional disinterest of most American companies in exporting.

We do not have precise figures on the makeup of the U.S. exporting community. There are between 250 and 300 thousand manufacturing firms in the United States, of which roughly 25 to 30 thousand export. Ninety-five percent of the manufacturing firms are small or medium-sized -- that is, have fewer than 1,000 employees -- but relatively few of them actually do any exporting. Collectively these companies provide at most 10 to 15 percent of our export total.

Exports of goods presently account for about 7 1/2 percent of our gross national product, the lowest percentage of any industrialized nation. Compare this figure with that of France--16.7 percent or Germany--22.6 percent or Italy--22.3 percent, or the Netherlands--38.3 percent, or the United Kingdom--23.1 percent. Of course, our economy has been and is quite different from the economies of these countries. Yet if U.S. exports of goods and services were to increase by only one percentage point of our gross national product, that would represent

nearly \$3 billion. This is a significant portion of our merchandise trade deficit.

It is also significant that a small number of U.S. firms account for a relatively very large proportion of U.S. exports. For instance, only about 100 firms export half of total U.S. manufactures exports. There is thus considerable ground for increasing the exports of additional firms. Let me now discuss how export trading companies can help us towards this export growth.

The Role of Export Trading Companies

Faced with a large domestic market, most small and medium-sized companies have little incentive to export. They also frequently lack know-how, management time, and financial resources. Exporting may seem too much of a management burden, too costly, and too risky for the uncertain return it promises.

Clearly one of the best ways for the non-exporting American company to get into foreign marketing is to work through a firm that will take a quality product manufactured by that company and itself do the exporting. We should learn from the experience of many of our most successful trading partners, including West Germany, Japan, France, and Hong Kong. All use some form of a sophisticated export trading entity to represent manufacturers abroad.

Aside from the major international grain companies, and a few firms that are either foreign owned or are subsidiaries of large multinational companies, we do not have large export trading entities. To be sure, there are some 700-800 export management companies in the U.S., many of

them well-managed and successful businesses, and another 3,000 or so extremely small occasional export merchants. Many of these export companies are not adequately financed or managed, however, and cannot provide the full range of export services required by the novice exporter. We also have about thirty Webb-Pomerene export associations, handling U.S. exports ranging from movie and TV films to textile machinery. Most of these Webb associations export bulk commodities such as sulfur, fertilizer, agricultural products and forest products.

I believe there are three characteristics that are essential for a successful U.S. export trading company. First, it must provide a "one stop" facility for firms of any size interested in exporting. It must provide market analysis, distribution services, documentation, transportation arrangements, financing, and after-sale services abroad. In performing these services, the export trading company will develop a thorough knowledge of the laws and customs of the foreign markets in which it sells. As exporting specialists, of course, these companies will achieve economies of scale beyond those an individual company could hope to achieve.

Second, a successful export trading company will seek out U.S. products for which it has discovered markets overseas. It will not stand by passively, awaiting overtures from U.S. companies interested in exporting their products.

Third, the export trading company should limit the capital outlay and risk that any individual company would have to assume to begin exporting. The exporting company must be sufficiently capitalized to allow operations on a scale that will achieve the economies mentioned earlier.

Export trading companies with these characteristics are most likely to be formed by entities that already operate in international markets and that have sufficient capital available. A manufacturer that exports its own products may use its overseas network to sell products of smaller U.S. companies that will not export on their own. Similarly, many banks have national and foreign coverage by branches, agents, or correspondent banks. These banks are already in the business of evaluating risks, researching foreign markets, and providing financing. Banks also have existing relationships with many domestic manufacturing companies. They are logical candidates to form and participate in export trading companies. No matter what the origins or ownership of the export trading company, its aim will remain the same -- to export products of U.S. companies that do not now export in significant quantities.

The Need for Legislation

If export trading companies have this potential, why has the private sector not already seized upon the opportunity, formed them, and equipped them with know-how and financial backing? The answer may lie largely in the inhibiting effect of some of our regulatory mechanisms. With the exception of bank holding companies, which can purchase up to five percent of the shares of any U.S. company, our banking laws and regulations do not allow bank investments in export trading companies. On the other hand, foreign banks are either sponsors of, or closely identified with, many of the successful export trading companies in other countries. There is also uncertainty in some segments of the business community over application of the antitrust laws to export activities associated with their domestic competitors.

The time has come to enact legislation removing the inhibiting effect of these regulatory schemes. We need legislation that provides flexibility in the regulatory schemes to allow successful export trading companies, while not undermining the banking and antitrust laws. The banking provisions of H.R. 7436 reflect an appropriate accommodation of the export trade interests to be promoted by the legislation, with important safeguards. H.R. 7463 makes no provision for bank ownership of ETCs. We believe such ownership, carefully limited and controlled, is essential if our ETCs are to flourish. The antitrust provisions of both H.R. 7463 and H.R. 7436 strike a fair balance between export enhancement on

the one hand and important competitive concerns on the other.

Let me now address the major provisions of the export trading company legislation.

1. Bank equity participation

Because of their expertise and financial resources, banks can play an important role in the successful development of export trading companies. The Administration believes that the banking provisions of H.R. 7436 adequately meet the concerns of safety and soundness for our financial system while permitting a leading role for bank participation in export trading companies.

H.R. 7436 permits a banking organization to make aggregate investments up to 5 percent of its capital and surplus in export trading companies. Regulatory approval would be required for aggregate investments of more than \$10 million, investments that cause the export trading company to become a subsidiary of the investing bank organization, or investments that would cause more than half the voting stock of any export company to be owned or controlled by banking organizations. Aggregate bank investment and credit extensions to export trading companies would be limited to 10 percent of a banking organization's capital and surplus. The provisions address specific regulatory concerns over parent bank exposure to trading company operations, potential

commodity speculation and the need to avoid preferential credit relations.

Export trading companies with non-controlling bank investments could take title to goods and hold inventory, with the exception of positions taken in commodities other than as may be necessary in the course of normal trading relations.

2. Financial Provisions

Both H.R. 7463 and H.R. 7436 recognize the need of many small and medium size businesses and agricultural concerns for financial help in launching a new export venture. The export trading company may need support in meeting its initial investment and operating expenses in getting under way. The Administration approves using existing authorities such as those provided by the Economic Development Administration and Small Business Administration to help export trading companies meet start-up costs.

The Administration does not object to authorizing the Export-Import Bank to guarantee commercial loans to export trading companies secured by inventory or export accounts receivables. However, as provided in section 107 of H.R. 7436 and section 106 of H.R. 7463, this authority should be conditioned on a finding in each case by the Eximbank's Board of Directors that the private credit market is not providing adequate financing and that the

guarantees would facilitate exports which would not otherwise occur. It should be noted that in H.R. 7436, section 107 would not be limited to export trading companies but would include any exporter.

3. Antitrust

The Administration remains committed to the standards and procedures for an antitrust exemption contained in Title II of H.R. 7463 and H.R. 7436. This approach is the result of careful and prolonged consultation within the Administration and between the Administration and the Congress. It strikes a careful balance between the need to provide businessmen with the certainty that their export trade activities will not lead to antitrust liability and the need to prevent anti-competitive developments within the United States.

We urge the adoption of the approach in H.R. 7463 and H.R. 7436. As you know, the Foreign Affairs Committee amended some provisions of S. 2718. We disagree with removing the requirement that the antitrust immunity will help promote exports and with providing automatic certification for existing Webb associations. We also believe that the detailed procedures set forth in S. 2718--and included in Title II of H.R. 7463 and H.R. 7436--for consultation with the antitrust enforcement agencies will benefit all parties by clarifying the manner in which they offer formal advice to the Commerce Department.

4. Tax provisions

The Administration remains firmly opposed to the modifications of the DISC and the Subchapter S provisions of the Internal Revenue Code proposed in each of the bills before the subcommittee. Most export trading companies should be able to meet the requirements of present DISC legislation. Thus, the creation of export trading companies will effectively expand DISC coverage without changing the statute itself. However, extending DISC benefits to "services produced in the United States" and to "export trade services" would be costly. The revenue cost of the bill cannot be precisely estimated, in part because the proposed language is general and open-ended. We are convinced, though, that the additional cost could run into the hundreds of millions of dollars. Present budgetary restrictions simply do not permit a revenue loss of that proportion at this time.

Even if Federal budgetary conditions were less stringent, we would have serious doubts about the scope of the proposed amendments. Many of our large service firms already have substantial international operations. These firms could incorporate ETCs simply to qualify existing operations for DISC benefits. The result would be a substantial revenue loss without any demonstration that exports would be appreciably increased.

Finally, we note that under the recently negotiated International Subsidies Code, the United States was able to secure at least a temporary "grandfathering" of the present DISC program. Substantially enlarging the legal scope of the DISC program would raise questions about U.S. observance of our international obligations.

With respect to the Subchapter S provisions, we support eliminating the present requirement that a qualifying corporation earn at least 20 percent of its income within the United States. We believe, however, that this and other reforms of Subchapter S should be part of a broader reform of Subchapter S. We call the Committee's attention to the report on Subchapter S reform recently issued by the Joint Committee on Taxation. We urge the tax-writing Committees to take up consideration of Subchapter S reforms as soon as is feasible. Because few export trading companies are likely to be owned by individuals as Subchapter S requires, this provision is not a critical element of support for export trading companies.

To sum up, with the changes in the antitrust section to which I alluded earlier, the Administration urges the adoption of the banking, financing, and antitrust provisions of H.R. 7436 or the addition of appropriate banking provisions to H.R. 7463. We also urge the deletion of the revenue provisions in both bills. Removal of these differences will allow the Administration and Congressional supporters to work together toward passage of export trading company legislation in 1980.

Chairman NEAL. Thank you, Mr. Katz, for your testimony.

We intend to move with this legislation just as soon as we possibly can, and hope very much we can get something passed certainly this year, and just as soon as we possibly can, but we do need to answer some of these concerns that we are raising, and that I am sure were raised by others.

Do you see any similarity between the situation that we are talking about creating, allowing bank participation in these entities, and the experience we had several years ago with real estate investment trusts, where a number of banks through subsidiaries got into new areas, and where some of them lost a good deal of money?

Would that be of concern to you?

Mr. CASSIDY. Since I am not familiar with the kinds of regulatory controls that were put on the banks' right to take part in the real estate investment trust, I can't give you a technical answer, but it is our assumption, in working this provision out with the Comptroller General, and with the Federal Reserve Board, that it contains sufficient regulatory controls that are flexible, and by that I mean as a bank becomes more involved in an equity position in an export trading company, it subjects itself, therefore necessarily, to more regulation by the Federal banking agencies that the kind of ill advised, risk taking which, as I recall was essentially the problem in the REIT's, should be discouraged, if not by the banks, themselves, in their assessment of the risk, then by the Federal regulatory agencies, but, as I say, I am not familiar with the kinds of regulatory controls that were put on REIT's.

Chairman NEAL. Let me put it this way: I am really looking for some good, solid reasons, not just vague opinions, as to why bank equity participation is necessary for the success of this, and maybe I am missing something, but I am still not hearing from you all any kind of evidence that banks would not, in fact, welcome the opportunity to offer all sorts of services to export trading companies for trade.

Again, I would love to find reasons to support this, because I want these things to be just as strong as they possibly can be. If banks are needed, let us get the banks involved, but please help me with some factual data—anyone at the table.

Mr. CASSIDY. Mr. Chairman, I think we might be able to do that, but we will have to work with you to identify exactly the kind of changes that you would envision in the current statutory scheme.

Chairman NEAL. I don't have the answer. The version I introduced doesn't allow bank participation, not because I am sold on the idea—it doesn't allow equity participation. It would seem quite natural and important that the international branches of banks take the lead in identifying sources of business, putting together financial packages and helping in a whole range of areas. The only question that I am trying to raise is that of offering of service for a fee, versus equity participation; that is the only question that I am really trying to answer at this time.

Mr. CASSIDY. We will get back to you, but let me give one example of I think the sort of problem that could be raised by that approach, if we assume we make no change in the current banking regulatory structure. Then, as I understand it, for example, most

big banks have an international marketing division where they do studies for their clients, but under the current regulatory scheme, if they identify in the course of their market study a specific foreign company which has a demand for a specific product, they cannot then turn around and go to an American manufacturer and say, by the way, even if it is a client of the bank—by the way, we would like to sell yellow widgets with a knob on them to a company.

Chairman NEAL. I am talking about the difference between bank equity participation—

Mr. CASSIDY. And some other form of—

Chairman NEAL [continuing]. And giving them full ability to sell services. That is the question I would like to address if we can.

Mr. KATZ. Mr. Chairman, I don't know whether factual evidence can be adduced or not. The assumption that we have been going on is essentially a simple one, and maybe this is oversimplistic, but we want to give the banks a stake in the success of this enterprise and not simply an additional market for the vending of their services.

We want them as entrepreneurs in an operation to get out there and organize. For example, we can conceive in the case of textiles that several medium-sized mills are going to be organized by a bank that will do everything, in effect, through this export trading company as an entrepreneur would, putting its services together in a package.

We fear, and I would say straightforward logic would dictate, that if we are talking about the sale of services for a fee, the bank would be at such an arm's length from the exercise of the organizational process that the thing may never get off the ground. It would be telling firms A, B, and C, you fellows get together, organize yourselves, and we will sell your services. I am not sure whether the bank would find that sufficiently interesting; whether firms A, B, and C would, in fact, find the necessary leadership, entrepreneurship to do this under the export trading company.

We can see an enterprising medium-sized bank in a textile area actually getting out there, forming the organization, doing all the paperwork, locating its potential customers, all the things a businessman, a dealer, does, and an entrepreneur in the true sense of the word, while the bank, itself, and the depositors are clearly protected by these elaborate provisions that were so carefully negotiated, which I recited in my testimony.

I must say, Mr. Chairman, it is not just the action of the foreign branches of the bank that we are talking about, because that is just one part of it. I would say the organizational aspect at home, knowing the American producers who are candidates for the export trading company, is perhaps the major part of this job.

Chairman NEAL. I quite agree with you, and I will yield in a moment, but when we get back on this subject, be thinking about giving me a good example of why you think they wouldn't do that for a fee just as easily as they would if they had an equity position. They certainly do it domestically. You wouldn't suggest, I don't think, that the banks need to have a piece of every company they serve domestically for them to offer financial services. Yet it seems to me a very close analogy.

I would like to yield to my good friend, the gentleman from New York, who has taken a lead in this legislation, and also in the area of helping small business.

Mr. LaFalce?

Mr. LaFALCE. Thank you, Mr. Chairman.

First, both Mr. Cassidy and Mr. Katz, I want to commend you on your excellent presentations this morning.

A few comments, before I go into the questions: First of all, I think that the legislation we are considering today, whether it is the Neal bill, the LaFalce bill, the Reuss bill, the Stevenson bill, there is no pride of authorship there; it is imperative that we enact legislation in this Congress that will facilitate the export trading companies as one means of promoting our overall export posture in the world.

I have to underscore the fundamental importance of this. It wouldn't matter if we imported the oil that we are now importing if we could match that with exports so that we wouldn't have a deficit. Even when you strictly look to goods, services, merchandise other than the oil, itself, we still have a deficit in our trade balance, and that is extremely disturbing.

We can go either of two routes. We can go the route of protectionism, or we can go the route of export expansion. The route of protectionism is ultimately an absolute disaster, and we had best realize that immediately, and it is disastrous for a number of reasons. I don't think with the gentlemen at the table I have to point that out, but I am very fearful of a coalition of interests that are favoring the concepts of protectionism as the most attractive, enticing, immediate lure of the present combination between big business and big labor. We have to overcome that.

The best way to overcome that is to aggressively pursue an export policy. The administration did not aggressively pursue an export policy in the past. About 2 years ago, the administration came out with a so-called export policy. It was more a nonpolicy, and we should not kid ourselves about that fact. And we should not discuss it. It was a nonpolicy.

And this bill and this approach is the first step in a meaningful policy, and we should get it passed this year. I think I am personally convinced that if the export trading companies are going to be meaningful at all in this overall endeavor, it is going to require financial institutions' participation.

The chairman has, understandably, as does the ranking minority member understandably, some reservations about equity participation and other changes in bank legislation. Whenever we are going to change existing legislation, we should have reservations about it.

I think, though, that the call for factual documentation of the need for equity participation will be a very difficult thing to produce. I think that what we really need is a pondering of the basic workings of the free enterprise system, and the fact of the matter is that whenever we want to induce some individual, whether a human person or a legal person to participate, the best way to do that, sometimes the only way to do that, is to give him a piece of the action, and that is the way our free enterprise system has worked, and I don't know how you can document the fact that given a human or legal person a piece of the action is the way to

motivate them to enter into this. I don't know whether you can factually document that or not; yet I think anyone who understands the free enterprise system will say yes, that is the way it works.

If you can document it in ways better than that, I hope you will, to make our case easier.

I think, though, there are certain things you can produce that would be helpful. The issue of equity participation by financial institutions in other enterprises is not unique. Mr. Cassidy, you briefly mentioned the ability of bank holding companies in limited circumstances. I am aware of the ability of financial institutions to participate in small business investment companies, only up to a certain percentage of their capital, only under rigid limitations, and so forth.

What I would like from the administration or anybody else who would like to provide it, is a memorandum outlining those present instances where financial institutions can participate in an equity way in our free enterprise system, and under what restrictions so that we can make an analogy between—everybody is saying this is a great deviation from the law. Well, you know, if we do permit them in order to make more readily available venture capital to participate in SBIC's, isn't there a tremendous analogy to be made between an export trading company in fostering of exports and a small business investment company? Let us take a look at that, and I would ask the administration to give us such a detailed look.

Also, let us talk politics for a second. Mr. Cassidy, we have a major bill that is all embrative so far as export trading companies are concerned, but we have jurisdictional problems, and you have mentioned that the DISC provision and the subchapter S provision is something that will be considered in an omnibus tax bill.

Now, whether the omnibus tax bill would be something that is passed in 1981, or whether it will be passed after the election in November, or whether it will be passed before the election in November, effective in January 1981, is something that I would like not to become too involved in this particular bill.

Do you think it would be preferable if we severed the tax provision from the bill that we report out of the Banking Committee; in other words, introduce a clean bill and just keep all the provisions in it, Webb-Pomerene Act, banking provisions, but leave the tax provisions out of it?

Mr. CASSIDY. Yes, definitely. In fact, that is what the Senate has done with their bill.

Mr. LAFALCE. The Stevenson-Danforth bill does that; are you sure of that?

Mr. CASSIDY. Senator Bentsen has introduced a separate bill which was taken up before the Senate Finance Committee. Stevenson-Danforth contains title 3, but we understand it will almost certainly be deleted on the floor.

Mr. LAFALCE. Let us get down to specifics. Suppose we eliminate the tax provisions; is there any controversy now as to what provision should be included in Webb-Pomerene? We have the different approaches; we have my bill; we have the chairman's bill; we have the Reuss bill; the Stevenson-Danforth bill as it was introduced, and as it passed the full committee. Are there issues still in contro-

versy? Is there one provision that has been pretty much signed off by all parties as far as Webb-Pomerene?

Mr. CASSIDY. There are two bills that contain the antitrust provision which we favor strongly. They are H.R. 7436, the Reuss bill, and also the Senate bill, S. 2718, the Stevenson-Danforth bill.

Mr. LAFALCE. As introduced or as amended?

Mr. CASSIDY. As reported by the Senate Banking Committee, and the Reuss bill as introduced.

Mr. LAFALCE. OK, that is Webb-Pomerene.

What about the Export-Import Bank provisions? Do you want to go into the niceties of that? Are you at this time equipped to go into the niceties of the Export-Import Bank provisions and the variables between the different bills and approaches?

Mr. CASSIDY. Again, as the Senate Banking Committee and as I believe the Reuss bill now stands, the Export-Import Bank would be permitted to give loan guarantees for loans in which the security was either export accounts receivable or export inventory. There is a condition on that that the Export-Import Bank would not provide guarantees if they were satisfied such financing was available from the commercial banking system.

We do not oppose this, and we support the provision providing guarantees for loans where the security is accounts receivable. We don't think that the loans for inventory security is necessary. We think that kind of financing is available in the commerce market.

Mr. LAFALCE. Isn't that in either the Stevenson bill—

Mr. CASSIDY. It is in both.

Mr. LAFALCE. Do you oppose it?

Mr. CASSIDY. We do not oppose it. We just do not think it is necessary.

Mr. LAFALCE. All right; fine.

Mr. CASSIDY. The bill that the chairman has introduced, if we had to choose, we would prefer the Neal version, but we do not oppose the other versions.

Mr. LAFALCE. Any other disputes insofar as Export-Import Bank provisions?

Mr. CASSIDY. No; not on Eximbank.

Mr. LAFALCE. How about participation by SBA or EDA? Do we need any provisions in this bill to buttress the ability of SBA or EDA?

Mr. CASSIDY. The provision that is again in the Reuss and in the Stevenson bills which permits SBA and EDA to provide startup grants and to fund in some cases operating expenses, we support.

Mr. LAFALCE. It looks as if the only problems we would have would be in the financial institutions' provision.

Mr. CASSIDY. There is one other thing, which is that we understand that the Foreign Affairs Committee, the other day when it was marking up their version of the export trading company bill, did make a number of changes in the Webb-Pomerene area, which we believe are probably ill advised. We much prefer the approach taken in the Stevenson and in the Reuss bills on Webb-Pomerene to what the Foreign Affairs Committee did.

Mr. LAFALCE. The Foreign Affairs Committee made changes in the Webb-Pomerene, which is Judiciary's jurisdiction, is it not?

Mr. CASSIDY. That is correct; yes.

Mr. LAFALCE. OK. Let us leave aside the issue of equity participation. What provisions in the bills—let us focus on the financial institutions now—would facilitate financial institutions' ability to offer the type of services that are necessary to operate or service export trading companies, and is there any dispute among the various bills and the administration approach on that?

I understand there might be a dispute within the financial community, itself, regarding issues such as McFadden, Glass-Steagall, and so forth, but we will put that off until another day.

Mr. CASSIDY. As among the various bills, again the administration supports the Reuss and Stevenson-Danforth. They are identical bills. I believe in virtually every bill except the bill introduced by Chairman Neal, those provisions are retained essentially unchanged, and the administration supports those provisions.

Mr. LAFALCE. Thank you, Mr. Chairman.

Chairman NEAL. Mr. Leach?

Mr. LEACH. We all know that we are experiencing difficulty with our export trade, but this approach strikes me as a bit of a panacea which may be appropriate but has the danger of being oversold. Have you done a serious comparative study of what other countries are doing?

For example, taking the top 10 or so exporting countries in the world and analyzing whether each has this type of approach. Is the United States standing alone? Or do very few others employ this type of approach.

Second, does the trading company approach account for a large percentage of exports of these countries or a very small percentage? I might address this to Mr. Katz.

Mr. KATZ. The answer is, we have studied it. The Department of Commerce did it with a study commissioned to Hay Associates, which is in the record. All of our large trading partners do it—West Germany, France, Japan, Korea, Hong Kong, the United Kingdom. This does account for a large percentage of exports. In most of these countries banks play a leading role in the trading company.

Mr. Chairman, I repeat, we are not, however, aping the provisions of law or the institutions created by these countries. They would be inappropriate. We have looked at some essential characteristics of their operation, and we have devised something which we think is entirely in keeping with our own law and traditions, including the tradition of keeping the separation between banks and actual commerce, and we think that the device that was so carefully worked out with our regulatory agencies in this legislation allows banks to take the initiative, to be the entrepreneur, as Congressman LaFalce so eloquently put it, to have a piece of the action, and to take the initiative by giving them appropriate incentives, and at the same time giving adequate guarantees to the depositors in keeping a distance between the bank and the actual export operation.

Let me stress, Congressman, that in our view this is not a panacea. We are looking for an institutional device that would have built into it the safeguards that concern us, both in terms of bank regulations as well as in terms of maintaining competition in our country; two traditions that none of our major competitors share,

but we are very concerned to maintain these. To build an institutional device while maintaining these two absolute requirements in our traditions in our system of law would permit medium- and small-sized companies to be drawn into the network of exports, and not leave it to the 100 largest firms to carry the load.

Mr. LEACH. Let me just ask one further question, as someone who is not overly familiar with this approach. Do you envision the development of trading companies in which large banks would have joint membership, or trading companies in which if one large bank was a member, no other large bank would be?

Mr. KATZ. Sir, we are envisioning several possibilities, including the formation of export trading companies without banks at all, or in some areas such as the one Congressman Alexander comes from, several small banks uniting to form the export trading company, or a large bank taking on this operation, or, as I have said before, we believe that it is entirely possible that in some of our industrializing areas in the South, some of the medium and upcoming banks are going to get into this business, too.

In a sense, what we are doing is creating the right legal framework for a new device while providing maximum flexibility, assuring the country that two of its most cherished principles are going to be preserved.

Mr. LEACH. Within the banking community there are certain services which banks share in providing. For example, there is a sharing of credit extension that takes place. This often is for good and proper reasons, but do you envision the need to possibly disallow a trading company in which multiple banks of substantial size may take part, or do you believe this is something we shouldn't concern ourselves with in legislation?

Mr. KATZ. My understanding, sir, is that if the bank participation exceeds a certain percentage, you are going to need regulatory approval. Fifty percent of the equity of the export trading company, which would come from banks, would require regulatory approval, and that is one of the built-in safeguards, including the percentage of a bank's total capital and surplus that it can be put into equity investment.

Mr. LEACH. That is understood, but to come back specifically to the question, do you envision the need to put in the legislation a preclusion of two or more large banks participating in the same trading company, or do you not believe that would present any great difficulty?

Mr. KATZ. Sir, we are not quite sure what business needs in this case, but we think that the bank regulatory authorities are going to be looking over this situation, that as these cases arise, they are going to be coming to us. If they think that there is an action obviously which is going to limit competition, the very formation of the entity would be blocked at the outset in the certification procedures.

So that the safeguards are built in, both on the banking side and on the competition side, from the very beginning.

Mr. LEACH. Thank you.

Chairman NEAL. Mr. Katz, you referred to some of the carefully worked out guarantees, under the title definition, this is in the Stevenson and Reuss bills, and probably in our own, also, the term

export trading company means a company which does business under the laws of the United States or any State in which it is organized and operated principally for the purpose of, and so on. What does principally mean?

Mr. KATZ. Let me turn this over to Ms. Chaves.

Ms. CHAVES. Normally the term principally is defined legally as being more than 50 percent, so it would be more than 50 percent of the activity of the trading company for the purposes of exporting goods or services produced in the United States, facilitating the export of goods and services produced in the United States by unaffiliated persons.

Chairman NEAL. So a bank could set up an export trading company and do about half its business abroad and do the other half of its business domestically?

Ms. CHAVES. The half would be on the export side; half of it would have to be targeted for export.

Chairman NEAL. They would do half their export business, but I assume they could get into any other domestic business they wanted to?

Ms. CHAVES. No, the concept would be that it would be organized for—

Chairman NEAL. It doesn't seem very precise to me.

Mr. KATZ. Mr. Chairman, they are allowed to do A and B under the act, and I will remind you that in order to be certified under the export trading company, they have to be very specific as to what they are going to do, and if they do not meet the criteria of the act, they won't be certified.

Chairman NEAL. Well, the criteria, though, say they ought to principally do A and B. I learned that means over half, meaning they could do 49 percent of their business domestically.

Mr. TRAVAGLINI. Sir, I think the intention here was not necessarily to fix a percentage, but in subsection 5 to exclude a company that would be overwhelmingly concerned with imports or had domestic business, and that is the reason why the A and B are spelled out in terms of exporting, but by using the word principally, the way was left open for companies to engage in a minimum of barter activity, and I would imagine that the level would probably settle at higher than 50 percent. I am thinking of DISC's, which operate under a similar constraint, where the income has to be 95 percent from exporting, which makes it a very marginal activity otherwise.

Chairman NEAL. I am just wondering if we shouldn't possibly consider tightening that up a bit and say exclusively, or 95 percent, or something like that. I think there will be some concerns that these entities that are designed primarily to facilitate our exports might be used to compete with domestic business with all sorts of tax advantages and extra capital considerations, and so on.

I also would like to direct your attention to the Eximbank and ask you if it would be possible under the Stevenson bill for a bank to set up and fund an export trading company and then maybe make an unwise investment and then have its investments underwritten by the Eximbank?

Mr. CASSIDY. That would be a case obviously where they would have to make the application to Eximbank for the guarantee go

through the usual Eximbank review, and we have to make certain assumptions about regulatory agencies such as they won't underwrite a bad risk when they take a look at it.

Chairman NEAL. Of course, one of the purposes of Eximbank is to underwrite some risk that private capital will not.

Mr. CASSIDY. I understand, but also having sat on the Eximbank Board during consideration of applications, they will refuse on a regular basis to underwrite risk that they consider to be unacceptable.

Chairman NEAL. You don't have any problems with that section then?

Mr. KATZ. And, Mr. Chairman, these guaranteed loans would be secured by accounts receivable or inventories, and presumably Eximbank would be looking at the goods that are offered in security.

Chairman NEAL. Again, on the question of bank participation, I still have not heard what I guess is strong evidence; according to my colleague from New York, there could be no evidence, this has to be a matter of judgment, but I still hope maybe you can help us by thinking of this a little further and giving us maybe some good examples of why you think that banks would not participate.

By the way, we have invited the banks to testify, and we will certainly ask them for their opinion of this also. We will be inviting any other private or public sector witnesses who can help us get a better feel for this.

Mr. KATZ. Mr. Chairman, we are going to give your question some very, very thorough consideration and see if we can come up with anything more that would help convince you.

I must say that your colleague gave what I thought was the most eloquent explanation of why we think it should be equity. It is quite clear that a major change would have to take place in the legal framework, whichever way you go, and the point made by Mr. Cassidy earlier, that the exposure of the bank paradoxically would be greater under the fee arrangement is a major consideration.

Chairman NEAL. I am afraid I didn't fully appreciate that point, and I was going to come back to that.

Would you elaborate a little on that? If a bank is providing a service or services for a fee, why would they automatically become liable?

Mr. KATZ. Because then it is the bank itself that is liable for performance on its contract with the export trading company. Did it render the appropriate advice, did it render the service in accordance with the contract?

There are all sorts of questions as to the liability of the bank, and by that I mean the bank with its depositors in the performance of the services, whereas under this legislation we are setting up a separate entity in which the bank's liability is quite clearly limited to 5 percent of its total capital and surplus in terms of its equity participation, and 10 percent of capital and surplus in terms of both its equity and its outstanding loans combined, two very severe limitations on its liability, so that the depositors paradoxically have far more protection under this arrangement than they would under a fee arrangement where if the bank makes a bad choice or a bad deal and is sued the entire bank is liable.

Chairman NEAL. If the bank owned or partially owned an export trading company and contracted with itself to provide services, wouldn't that leave the bank in the same liability position, they would be separate from the parent bank organization anyway, wouldn't they, the export trading company? These would be separate corporations.

Mr. CASSIDY. Yes.

Chairman NEAL. And presumably deal with its own bank? I don't see how the liability would be limited. You could limit the liability of the export trading company but I don't see how by this legislation you would be limiting the liability of the bank.

Mr. KATZ. We are assuming that it would be the export trading company, sir, that would be providing these services, that all of the provisions of law which provide a barrier between the bank and certain commercial services that are not of a banking character would be maintained.

We are not proposing any amendments in any of the legislation that Mr. Cassidy cited.

Mr. LEACH. If the gentleman will yield, I would like to pursue this in a slightly different vein.

When one considers in theoretical terms the concept of motivating new entries into the export market, one looks favorably at the prospect of trading companies. However, it strikes me that one of the problems we might encounter is that banks are going to look at their customers that currently export and apply pressure on them to participate in a trading company in which the bank is involved.

Then you have several problems that arise. One is how do you guarantee that arm's length interest rates are applied to these trading companies comparable to their competitors. Second, banks are very knowledgeable about what their customers do, and so in a situation where one customer of a bank is selling widgets abroad and another customer is doing the same thing, you can visualize the banks putting pressure on one or the other to participate in a trading company, and possibly extend advantageous loan terms.

Beyond that you put the bank in an incredible conflict of interest position with a customer that doesn't participate in a trading company, because the bank could be very knowledgeable about that particular company's activities involving selling to a particular client.

It is hard to believe when the bank becomes involved in a trading company with a competitor that the bank wouldn't indirectly or directly tell the competitor that a big customer of its competitor is a particular company or a particular government, and so suddenly you have developed a situation which is rife with a conflict of interest and the potential of lawsuits. I just wonder if it is necessary that banks participate in these trading companies.

Finally, I might say that the expertise banks bring is basically in the financial area of raising capital. It happens that some banks also are active overseas, the facts are that banks don't have a great deal of expertise in the trading area in terms of how to manufacture and market.

The only expertise that banks really bring is financing, and I think that the chairman of this subcommittee raises some very

serious questions about whether banks should be involved in a trading company.

I would like your comments on: First, what specific expertise does a bank bring that makes it desirable that a bank be included in this legislation; second, do you think there are going to be conflicts of interest arising between a bank and two of its customers, one of which is a trading company and one which is not; and third, do you think that banks will implicitly bring pressure on their customers to join in?

Mr. KATZ. Congressman, there is a specific provision of the legislation, section 105(c)(4) of S. 2718 as amended in the Banking Committee at the specific request of the Federal Reserve, which prohibits a banking organization or any of its affiliates, and I stress, any of its affiliates, from extending credit

*** to any export trading company or to customers of such company on terms more favorable than those afforded similar customers under similar circumstances and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

Mr. Chairman, as I read the background of this, it is quite clear that this language tracks previous legislation on insider lending issues, and is deemed in the banking community and in bank regulatory agencies to be the language that is sufficient guarantee to prevent the kind of discrimination and pressure to which you refer; and this provision will be specifically supervised by the bank supervisory agencies.

On your second point, as to the services that banks can render, I think it goes well beyond the question of the financing capabilities of a bank.

A bank, first of all, and I start on this side of the ocean, or this side of the border, knows its customers; it knows their potential; it knows what it can put together in a way that perhaps no other group except a large manufacturing organization with lots of suppliers knowing them could possibly do, and that is the first and most important ingredient to putting the thing together on the supply side.

The same bank knows the market on the other side through its affiliates, through its extensive network of corresponding banks, and is uniquely qualified to put together the potential seller in our country with the buyer in the other country.

Mr. LEACH. Excuse me; I would like to interrupt you and say I challenge that assumption.

Coming from Iowa, I don't know a single bank in my area that knows the market for the selling of widgets in France, or whatever other product.

Now, you can say, does Citibank know the market for widgets in France, and I don't think Citibank has any particular expertise in knowing the market for widgets in France compared to industrial groups, compared to all sorts of other institutions.

Citibank knows the economy of France, it knows the financial structure of France, but I don't think banks have any particular selling expertise. I know of no banks that I would consider to be very good marketers of goods. They are financiers and they know financial markets, and I am just a little surprised that there is this assumption that banks know industry.

I am willing to be corrected in that, but I don't see it.

Mr. KATZ. Mr. Chairman, the bank, take Citibank, or let me back off for a moment and go back to your bank in Iowa.

In the first instance, the bank is in Iowa, and I wouldn't sell them short, they have their connections, their network of communications is extensive and is one of the major untapped resources that we are trying to get into this picture.

Now, on the other side, I am speaking to you, sir, on the basis of 30 years in the foreign service our major competitors in terms of helping American businessmen overseas are the banks, and very frequently we will consider ourselves in an embassy to have been praised when a businessman tell us, well, you know your information is almost as good as National City Bank.

I am not trying to give free publicity to that particular institution, but I have dealt with them overseas and their knowledge extends well beyond the macro knowledge situation of their country, they are also very much into the micro situation of specific industries in that country because they are involved also in finding and looking for various investment opportunities.

Now, you have made a very good point that those people out there who are very good analysts and reporters in terms of financing and investments are not salesmen, and we don't say they are, but we say that when we put the banks in an equity position and using their various resources to work in an export trading company, the export trading company is going to have all of this infrastructure and itself will be doing the salesman job.

We are not saying that banks are by nature—

Mr. LEACH. To play the devil's advocate, let me interrupt and say one could make two arguments: First, either the banks don't have expertise and therefore they shouldn't be involved; or second they have too much expertise in which case you have obvious conflicts of interest and obvious extraordinary new pressures on private enterprise to change relations that they might not on their own volition choose to change.

A classic dilemma emerges in the case of two companies that sell, competitively, widgets. If the bank puts pressure on one to join an export trading company, will it use its expertise to then develop new markets to the disadvantage of the company that chooses not to join an export trading company?

Do you see any conflict there?

Mr. KATZ. The conflict is specifically ruled out by the legislation, by special provisions of the legislation, that will be policed by the regulatory agencies.

Mr. LEACH. Let me just say we have dealt in many instances in Congress with arm's length relationships between various situations, and it is always important to put provisions in the statute of that nature but very frankly arm's length relations are winked at.

I hate to use the word fraudulent but there are obvious conflicts that just are there, and I am not convinced that we shouldn't recognize that potential problem and say perhaps that despite that problem it is more important that we go forth, but I think that problem should be addressed and very forthrightly.

Mr. CASSIDY. Mr. Leach, we agree, and I think maybe it would be more useful rather than to take the black and white assumptions

which you pose, which are relevant but certainly not the only possibilities, and to back up for a second and say what we are interested in here is to arrive at some institutional arrangement which provides the greatest incentive to exports, particularly for small and medium size U.S. businesses, but for American goods, period.

In order to do this it is our judgment having considered, I assure you, all of these arguments which are serious and must be explored further but, nonetheless, we have considered them and it is our judgment that in order to create this kind of institution it must have some degree of flexibility within very clear parameters.

Now, we do not assume by any means that every one of these export trading companies would include a bank. It is quite conceivable they would exist without banks, but we don't know, and in many cases we suspect very strongly that a bank may be a critical element to bring to the success of the trading company.

Now, as you point out, some banks have expertise internationally and some banks do not. It is our impression that more do than do not, but I think even more importantly, you stated that the essential business of bankers is financing, not these ancillary commercial activities, and from our study of the successful foreign operations I say again what I said earlier on, that it is clear that one key element of all of the foreign trading houses is a very strong financial underpinning because of the nature of international business which, in every case, requires a long-term commitment of moneys to develop a new market which almost necessarily, unless you are very lucky, means a period of time when you are not going to show any profit.

It is the way the Japanese do business. They have been trying to sell automobiles in the United States for 30 years and for the first 20 they didn't make much money. They are now doing fairly well, as we see in the newspapers, but the point is it takes a long time and the key to success in this area is access to adequate financing.

We think that equity participation of the banks or the possibilities of equity in the banks in the system will, as Mr. LaFalce, I think, put it very well, provide an incentive which could bring in the kinds of capital that are required to carry on this business.

Mr. LEACH. Let me end with one final question.

Many of us are very concerned with the basic equity position of our banking system today, particularly the large international banks. If you are arguing that you want to take a percentage, even though it is small, 5 percent or so of bank capital, and extend it to a lending situation where they are not going to make any profit for 20 years, you could well accentuate the problem.

You are also saying that banks ought to involve themselves in new risk ventures at the very time when most people are saying banks should be more prudential and at the very time most are saying that the problem in banking today is lack of capital, not too much capital.

There is not a single money center bank in this country that can be described as overcapitalized, but you are saying that banks should be allowed to invest some of their existing capital into new situations that are risky and will not have an early return on investment, or you are saying that banks ought to participate in

situations where there is already good trading and then you are going to have the problem of whether or not on their own volition a company that is already trading and already making a good profit really wants to give up some of its capital base to its lending institution.

I am hard pressed not to think that if I were an exporting company right now and my banker would come to me and say, we would like part of the action, it would be difficult to decline his request, particularly if I knew that I had a competitive company which the bank also serviced and that bank was going to take part of that company's action.

Then the question is, Under those circumstances have you improved U.S. trade policy? I am not sure you have or you have not.

I just think these disadvantages should be very seriously examined. I have an open mind on the issue and have not come to a final decision, but I am very apprehensive of too much bank involvement, and I will go one step further.

One of the concerns of the House Banking Committee and the general public is that we want a banking system that is national in its effect but where local jurisdictions play a critical role.

I would be hard pressed not to think that your large banks would not be putting pressure on their correspondent banks and then be putting pressure on their smaller industries to join in conglomerate efforts.

I have yet to be convinced this would not change not only the nature of companies trading abroad but also the nature of the banking system itself. All of this should be very carefully examined before we hastily say we have a problem and this is the way you solve it.

Mr. CASSIDY. Let me say a couple of things. First of all, the case of the Japanese automobiles I don't mean to hold out as a model that we should follow. It would require a fundamental reshaping of our economic system, which none of us desire, but it is an example of the kind of persistence in an extreme situation that is required to penetrate a foreign market.

Second, on the point about the scarcity of capital, that is absolutely true, and that is one of the fundamental issues that we are now confronting as a country with respect to our export performance.

Obviously there is not enough capital to do the kind of investment that we need in virtually every sector at the same time, so it is a question of allocation of resources.

It is our opinion that what we would like to do in a very small way in this bill is to give a greater incentive for the allocation of those—

Mr. LEACH. Excuse me. Let me correct you. I didn't say scarcity of capital in the sense that you are using it. In fact, right now there is hardly a bank in America that does not have capital available for provincial lending. There is a scarcity of capital in terms of the base of the banks who want to get involved in trading companies. The top 10 banks of the United States have a 3.6-percent capital base compared to their asset base, and that is the scarcity of capital I am talking about, not the fact they don't have a lot of funds to directly lend. It is the taking away from that 3.6

percent that will be leveraging the banks further in risk-oriented areas, and that is the issue to be addressed.

Mr. CASSIDY. OK. I understand that, although I would point out that the limitations on the bank participation are so strict I doubt we will make a significant inroad on the basic equity of the banks, themselves, but to pursue that for a moment, one thing we want to do across the board is to give business enterprises a greater incentive to move into this particular area which we think is essential for the overall economic welfare of the country. This is certainly not the only place it can be done; it has to be done in a number of places, but we think this is a good place to begin to think about it.

And let me say with respect to the overall observations about the dangers of the large banking operations using their obvious power to force other smaller entities into business with them, one, in looking at the banking provision, I think shouldn't forget that in order to be certified as an export trading company, one must also pass the standards for the antitrust exemption, and essentially pass through review by the Justice Department, which is at least as concerned as anybody else is about the competitive situation in this area.

It is not worth going into now, but I suggest you read the banking provisions and also at the same time take a look at what is section 204 of the Reuss bill, which includes the standards for exemption under the antitrust law.

Mr. LEACH. You are suggesting that a Congressman read? [Laughter.]

Mr. CASSIDY. Well, the alternative is for me to read it to you now. I will give you a summary; how is that?

Mr. LEACH. Thank you very much.

Chairman NEAL. If there are no other comments, let me thank our witnesses again. You can see, I think, that there is some concern in this area, and we welcome any further advice or thoughts you have on it. We will be calling as witnesses representatives of the banks, and we may get back and review our own regulatory agencies for further thoughts they may have on that.

Mr. CASSIDY. Mr. Chairman, we will provide answers to any questions that you or any subcommittee member might have to be answered for the record.

Chairman NEAL. Thank you again.

The subcommittee will recess, subject to the call of the Chair. [Whereupon, at 12:25 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[The following letter from Mr. Cassidy containing responses to questions submitted by Chairman Neal and members of the subcommittee and also testimony of Congressman Clarence J. Brown of Ohio were submitted for inclusion in the record:]

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

July 24, 1980

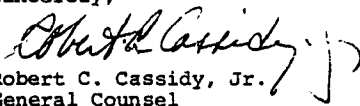
The Honorable Stephen L. Neal
Chairman
Subcommittee on International Trade,
Investment and Monetary Policy
Committee on Banking, Finance and Urban Affairs
The United States House of Representatives
Washington, D.C. 20515

Dear Mr. Neal:

I am pleased to provide you with responses to a number of questions which were directed to the Administration Panel at your July 2nd hearing on export trading companies.

I would hope that the answers are fully responsive to your needs and could be included as part of the hearing record.

Sincerely,


Robert C. Cassidy, Jr.
General Counsel

Enclosure

QUESTION: Why is bank equity participation in export trading companies necessary? Can the same objectives be achieved through bank provision of export services for a fee?

ANSWER: The key objective of this legislation is to encourage the formation of export trading companies, and the expansion of existing export management companies, as a means of stimulating U.S. exports -- especially exports by small and medium sized U.S. firms which lack the expertise and capital necessary for active penetration of foreign markets. To be effective, such companies must be able to offer a wide range of export services to U.S. exporters, act as their agent in negotiating export sales, and make necessary export arrangements.

Conceivably, banks could provide a limited range of financial and bank-related export services to export trading companies, which would in turn act as the sales agent for small and medium sized U.S. firms and arrange for the export of their goods. However, there is legitimate question, (1) whether export trading companies would be created with sufficient size and scope of operation without the stimulus of bank investment, and (2) whether the fees charged for such services would provide banks with sufficient incentive to get involved in export services in a major way.

U.S. banks can now provide a wide variety of services relating to exports, either directly or through their Edge Act Corporations and affiliates. These include financing services, foreign exchange facilities, information on foreign markets and economies, business references, and advice on shipping arrangements. The corporate powers of national banks also include those "incidental" powers necessary to carry on the business of banking, and can be construed to include services ancillary to export finance. The authority to determine legitimate "incidental" services rests with the regulatory agencies.

It is questionable whether the full range of export services contemplated by the export trading company legislation would be considered "incidental" to normal bank business, however, and court decisions have made it clear that these powers cannot be used for banks to engage directly in commercial activities. There is also nothing in present banking legislation which would appear to give national banks the ability to act as a buyer or seller to negotiate the terms of export sales as an export agent, to take title to goods on behalf of U.S. exporters, or to do more than act as a finder in bringing two parties together.

As long as uncertainty continues to exist regarding what services legitimately can be provided by banks, they will be reluctant to actively establish the organizational framework necessary to make export promotion and the provision

of export services a major activity of the bank. Regulatory agencies' interpretations of "incidental" powers, even if permissive, can always be overturned in the courts, as has occurred with regard to travel agencies. Bank income from service fees alone, furthermore, as distinct from equity income, would tend to attract banks only to big-ticket export sales by major corporations rather than a number of small export sales. It is, therefore, unlikely that bank provision of export services -- without a clear definition of a wide range of acceptable service activities in bank legislation -- would provide the kind of one-stop export service essential to stimulate exports by small and medium size U.S. firms.

Equity participation by banks in export trading companies, in our view, offers a much more effective means of stimulating the formation of ETCs and, thereby, exports by firms not now involved in foreign trade.

- Lack of capital is a key factor inhibiting the formation of effective ETCs. Banks can be a major source of investment capital.
- Banks with international offices, experience in trade financing, and familiarity with both potential foreign customers and domestic U.S. producers are the most likely source of leadership in forming export trading companies and possess skills which are important to their organization and management. They will not play this leading role without equity participation, however, either in combination with interested domestic firms, or by developing a fully-owned ETC subsidiary.
- Equity participation in export trading companies would provide banks with a strong incentive to promote U.S. exports and to help assure the success of the ETCs.
- Income from equity, as well as from loans and service fees, should provide further stimulus for active development of the organizational structure within the investing bank to package necessary export services for ETC clients.
- Finally, smaller banks which do not have the resources to provide full scale export services may still participate to some extent in facilitating export trade. Through a joint venture, the smaller institution may provide the capital essential to get a trading company started, without having to develop expertise in the international trade market.

In sum, export trading company legislation which enables bank equity participation in ETCs provides the broad authority needed to encourage a leading bank role in the formation and operation of export trading companies. Provision of bank services alone cannot serve this purpose, and is unlikely to occur on a broad scale without major changes in domestic banking legislation.

QUESTION: What kinds of equity investment by U.S. banks are now permissible under U.S. law?

ANSWER: Congress has legislated clear exceptions to the prohibition against equity ownership of corporations by banks, in order to foster development in areas of national importance. It has specifically permitted an exception to promote exports and trade, through bank creation of Edge Act Corporations.

- Congress expressly set up Edge Act Corporations to compete with foreign-owned institutions at home and abroad, and to provide the U.S. exporter and importer "a means of financing international trade, especially United States exports." Banks are permitted, by law, to invest up to 10 percent of their capital and surplus in such corporations. The Edge Act also permits banks to form Edge Act banking corporations in the United States as long as their business is related to international business. Congress carved out an area of national importance for bank participation through equity ownership because it was decided that bank investment was necessary to make the program successful.
- Edge Act Corporations themselves may invest up to 10 percent of their capital and surplus in any one corporation doing nonbanking business outside of the U.S. and not engaged in the general business of buying or selling goods in the United States. Further, they may own up to 20 percent of any corporation outside of the United States, regardless of its business.

As limited exceptions to the general prohibition initially set forth in the National Bank Act against bank investment in commercial operations, Congress also has permitted U.S. banks to purchase equity in three types of business enterprises:

- (1) bank-related or bank servicing firms,
- (2) foreign banks and international finance, and
- (3) community-oriented corporations (or firms established to promote specific national purposes).

An attachment lists specific permissible equity holdings for national banks, as well as any limits on the amount of bank investment under current law.

- Bank-Related or Bank Servicing Firms. Congress has permitted banks to own stock of corporations engaged in a safe-deposit business, holding bank premises, or providing services such as bookkeeping, accounting and data processing to banks. This includes bank operations subsidiaries which are separately incorporated to perform functions that the bank could perform directly.
- Foreign Banks and International Finance. In the foreign area, Congress permitted banks to own foreign banks in order to compete abroad. Since foreign banks do not have the same prohibitions against commercial ownership as exist in the United States, ownership of foreign banks may indirectly involve U.S. banks in ownership of commercial concerns (including export trading companies).
- National Objectives. Congress has permitted banks to purchase equity in state housing corporations and the National Corporation for Housing Partnerships to promote housing, especially for low- and moderate-income families. It has permitted banks to make investments in small business investment companies (SBICs), which provide capital to small business concerns, and in Minbanc Capital Corporation, which provides capital to minority-owned banks. Finally, it has authorized investment in agricultural credit corporations which make agriculture loans. Thus, in three specific areas, housing, small business, and agriculture, the Congress has made a specific exemption from the prohibition against bank equity participation, in order to promote development in that area.

Finally, bank holding companies are permitted to own up to 5 percent of the stock of any corporation operating in the United States or abroad. In addition, they may own stock in corporations principally engaged in business outside of the United States, with Federal Reserve Board approval.

Equity participation by banks in export trading companies is consistent with past Congressional policy legislating limited exceptions to the prohibition against bank equity investment where a basic national purpose can be served through bank equity investments, and where bank investment appears to be a key factor in achieving this objective. Exports are clearly a matter of high national priority, and are increasingly essential to the strength of the U.S. economy and of the dollar, as well as providing the best means of paying for vital U.S. imports. Without equity participation by banks, it is questionable whether export trading companies -- designed to stimulate exports by small and medium sized U.S. firms -- will in fact be formed.

Permissible Equity Holdings for Banks

Paragraph 7 of the Section 5136 of the Revised Statutes (12 USC 24) prohibits commercial banks from owning shares of stock of any corporation, "except as hereinafter provided or otherwise permitted by law". The following is a list of entities the stock of which banks are permitted by regulation or statute to hold.

Safe Deposit Corporation: Corporation organized under the laws of any state to conduct a safe deposit business.

Limit: Bank may invest up to 15% of its capital paid in and unimpaired and 15% of its unimpaired surplus.

National Corporation for Housing Partnerships: Corporation authorized by title IX of the Housing and Urban Development Act of 1968.

Limit: 10% of capital and surplus

State Housing Corporation: Corporation formed in the same state as the investing bank to provide housing to families of low- or moderate-income.

Limit: 10% of capital and surplus.

Agricultural Credit Corporation: Corporation organized to loan to farmers and ranchers for agricultural purposes including breeding, raising, fattening or marketing livestock.

Limit: 20% of capital and surplus unless the bank owns more than 80% of the corporation.

[12 USC 24]

Bank premises corporation: Corporation organized to hold the building and premises of the bank.

Limit: 100% of capital and surplus.

[12 USC 371d]

Foreign bank: Bank organized under laws of foreign country conducting no business within the United States.

Limit: 10% of capital and surplus (total investment in all foreign banks).

[12 USC 601]

Edge Act Corporation: Corporation organized to engage in international or foreign banking.

Limit: 10% of capital and surplus (total investment in all Edge corporations).

[12 USC 615]

Federal National Mortgage Association: Bank may hold stock received in exchange for capital contribution.

[12 USC 1718]

Bank Service Corporation: Corporation organized to perform services for bank (i.e. check and deposit sorting etc.)

Limit: 10% of capital and surplus

[12 USC 1861]

Small Business Investment Company: Company formed to make investments in (and thus provide capital to) small business concerns.

Limit: 5% of capital and surplus

[15 USC 682]

Minibanc Capital Corporation: Closed-end investment company organized to provide capital to minority-owned banks without ready access to the usual sources of capital funds.

Limit: 2% of capital and surplus

[Comptroller of the Currency Ruling]

Community Development Projects: Projects predominately of a civic, community or public nature from which stock is received as the result of a permissible contribution.

Limit: 2% of capital and surplus (total of 5% of all investment in CDPs).

[12 USC 24; Comptroller of the Currency Ruling]

Other Stock in connection with a debt previously contracted, received through foreclosure or in settlement of a claim. Bank has a "reasonable" period of time to divest in order to minimize loss.

[Comptroller of the Currency Regulation]

Operating Subsidiary: Corporation which may only perform functions parent bank is legally authorized to perform, in which bank owns at least 80% of voting stock. Acquisition requires prior approval.

[Comptroller of the Currency Ruling]

QUESTION: What regulatory means exist to prevent a repeat of the Real Estate Investment Trust (REIT) experience, to assure arms length transactions, and to deal with potential conflicts of interest?

ANSWER: The experiences of the 1970s have taught a number of lessons to those involved in banking and in regulating banks. The REIT example offered a particularly hard lesson to those interested in expanding banks' activities beyond their areas of expertise. The regulatory agencies have also learned a great deal and as a result have developed hundreds of procedures which examiners use to assure arms length transactions and to monitor exposure to related organizations. Outlined in the Comptroller's Handbook for National Bank Examiners are guidelines in the following areas: management, financial support, diversification and control. These guidelines specifically deal with fees paid to insider-related organizations, transactions with REITs, disclosure of inter-company transactions and relationships and the like. Examiners are responsible for making certain that the restrictions set out in section 23A of the Federal Reserve Act, "Relations with Affiliates", regarding security for loans to affiliates and limiting exposure to affiliates, are upheld.

Further, specific sections of the proposed legislation on export trading companies contain safeguards to avoid the difficulties encountered in the REIT experience. First, bank-owned ETCs would not be permitted to use a name similar to that of the bank. Second, banks would be limited, under a Federal Reserve proposal to investing 10 percent of their capital and surplus in ETCs. This limit parallels that applicable to other equity investments of banks in corporations. The ETC legislation incorporates its own limits on loans and investment which would safeguard the parent banks from the same exposure suffered with REITs.

TESTIMONY OF
CONGRESSMAN CLARENCE J. BROWN
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE,
INVESTMENT AND MONETARY POLICY
HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
JULY 8, 1980

I appreciate this opportunity to express my deep concern over inadequate Export-Import Bank financing of exports. As a Member of the Joint Economic Committee, I have long been concerned with the growing U.S. trade deficit. U.S. export sales have been rising, but imports have been rising faster. An important reason for this trade imbalance is the lack of competitive Exim Bank export credit programs.

I submit for the record the attached letter from the Marion Power Shovel Company, an industrial concern in my district. The company has long been an important source of jobs in the Marion, Ohio, area and is one of my state's most important exporters. As the letter details, the company lost an important contract to a British firm because the United Kingdom Export Credit system provided more attractive financing for the contract than did Exim Bank. The company is naturally perturbed, and its concern mirrors my reservations about the competitiveness of our export financing programs.

Multilateral negotiations will not transform the ailing Exim Bank into the key export financing institution it ought to be. The bank needs money to refinance its reserves and broaden its programs. Present calls to refinance the bank for the remainder of FY 1980 are steps in the right direction, but it is critical that we begin to look at long-term plans for keeping the Exim Bank well funded.

These long-term plans will inevitably demand an entirely new attitude toward funding the Exim Bank. Under present law, the authorizations and guarantees of the bank are considered Federal expenditures -- appropriations for the bank are evaluated alongside financing requests for the MX missile and the welfare system. However, a dollar given to the Exim Bank and then lent to a foreign buyer makes money -- it collects interest and is paid back. It is quite a different kind of dollar than one which is appropriated to pay for food stamps -- that dollar is spent and never seen again. Failure to recognize the distinctiveness of Exim Bank funding in the appropriations process has put the cause of the bank's financing in the middle of domestic political controversies that surround all government spending programs, and the result has been a scarcity of funds for this institution.

As attitudes toward Exim Bank funding change, so should the bank's structure. Such a restructuring might come through the establishment of Exim as a commercial institution under the Federal budgetary process. A loan-loss reserve, based on the loan experience of the bank over the last 20 years, would be the basis of its export-financing operations. The budgetary process would create the reserve and fund any special lending authorizations, with Exim Bank appropriations being legally considered as interest-bearing loans rather than expenditures. Exim Bank has always turned a profit for the Treasury, and it is high time we institutionalize this fact.

A rejuvenated Exim Bank would go a long way toward turning around our trade problems. In addition to providing more help to larger exporters, such as Marion Power Shovel, it could also

finance more exports from medium- and small-sized businesses. Quite frankly, the Exim Bank does very little for small business.

I have long been in favor of greater commercial bank effort in financing exports, both for small and large business. I have not yet developed a specific proposal for bringing this about, but I am working on it. Subsidizing loans for export development might be one way to accomplish this. Deducting such loans from deposit liabilities before applying reserve requirements might be another way. Clearly, a more sophisticated system of inducements to get local U.S. banks and the firms they serve to address business opportunities in overseas markets would serve the local banking institutions and their customers and, in the process, would serve national policy.

I want to thank the Subcommittee for this opportunity to express my views. Our trade imbalances will not disappear overnight. But revamped funding of Exim Bank would be a step in the right direction, as would some form of incentive to commercial banks to encourage them to take a more aggressive role in export financing and export assistance. I commend the Subcommittee for pursuing this important matter.



MARION POWER SHOVEL DIVISION ■ DRESSER INDUSTRIES, INC.

March 10, 1980

The Honorable Clarence J. Brown
House of Representatives
1135 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Brown:

Thank you for discussing the problem Marion has with competitive financing against a U.K. competitor on excavators for use in the U.S., as well as overseas mining operations. This will summarize briefly some of our key concerns.

The non-U.S. company competes directly with Marion in a range of sizes of large walking draglines for coal and phosphate mining applications. On their exports, they receive assistance from the U.K. Export Credit Guarantees Department for overseas shipments. To stimulate exports, the U.K. enables them to offer long-term financing at 7.75% on outstanding balances, plus the usual bank and insurance premium fees, which would normally push this figure to a total of 9%.

Additionally and perhaps more importantly, the U.K. is also willing to offer inflation protection wherein the U.K. absorbs excess costs due to inflation beyond a specific amount, thus protecting both manufacturer and purchaser from excessive inflation rates. No private company can afford to offer this kind of protection.

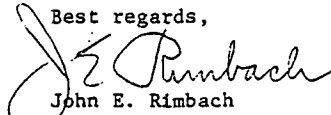
This type of arrangement has the potential of including feasibility studies and machine erection (which can run as high as 20% of the price of the machine) as well as the manufacture of the original equipment. In general, we have found that EXIM will handle equipment only.

Since 1976, this competitor has supplied five machines for use in the U.S., one machine for use in the country of Jordan, and one for use in the U.K. Each one of these machines represents direct labor employment for approximately 50 man years in our shop and, of course, for every shop man we must add two more indirect people. Thus a machine of this type provides employment for a total of 150 man years in Marion. Naturally, since a number of items such as electrical drive, compressors, etc. are purchased from vendors, the machine also provides additional jobs for others.

Further, at a price of \$8 million dollars and based on U.S. industry average pretax profit of 10%, each machine provides approximately \$400,000 in tax dollars for the U.S. Government.

I very much appreciate your interest in this international competitive situation. For the most part, of course, we expect to handle much of our business so we can compete effectively. However, when we are up against special concessions by foreign governments in favor of their own manufacturing industries, we feel this should be brought to your attention for appropriate action.

Best regards,



John E. Rimbach
President